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TRIALS

FOR

HIGH TREASON,

IN

SCOTLAND,

UNDER A SPECIAL COMMISSION,

HELD AT

STIRLING, GLASGOW, DUMBARTON,

PAISLEY, AND AYR,

IN THE YEAR 1820.

IN THREE VOLUMES.

TAKEN IN SHORT-HAND BY

C. J. GREEN.

VOL. I.

EDINBURGH:

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TRIALS

FOR

HIGH TREASON

AT

STIRLING, GLASGOW, PAISLEY, DUMBARTON, AND AYR.

June, July, and August, 1820.

COMMISSION IN LATIN.

GEORGIUS QUARTUS, Dei Gratia, Britanniarum Rex, Fidei Defensor, perquam fideli et intime dilecto consanguineo et conciliario nostro, Jacobo Duci de Montrose, Justiciario Generali nostro, in illâ parte regni nostri uniti Magnæ Britanniæ et Hiberniæ vocata Scotland, vel Justiciario Generali nostro pro tempore existenti; fideli et dilecto Carolo Hope, Armigero, nostri Collegii Justitiæ præsidi, vel præsidi nostri Collegii Justitiæ pro tempore existenti; perquam fideli et dilecto Conciliario nostro Davidi Boyle, Armigero, Justiciario Clerico nostro, vel Justiciario Clerico nostro pro tempore existenti; perquam fideli et dilecto Conciliario nostro, Samueli Shepherd, Equiti, Capitali Baroni Scaccarii nostri in parte regni nostri prædicta, vel Capitali Baroni dicti Scaccarii nostri pro tempore existenti; perquam fideli et dilecto Conciliario nostro, Gulielmo Adam,

Armigero, Capitali Commissionario nostræ Curiæ Juratæ in Causis Civilibus, vel Capitali Commissionario nostræ Curiæ Juratæ in Causis Civilibus pro tempore existenti; et fidelibus et dilectis, Georgio Fergusson, Armigero, Domino de Hermand, Adamo Gillies, Armigero, Domino de Gillies, Davidi Monypenny, Armigero, Domino de Pitmilly, Archibaldo Campbell, Armigero, Domino de Succoth, et Alexandro Maconochie, Armigero, Domino de Meadowbank, Commissionariis nostris Justiciariæ, vel Commissionariis nostris Justiciariæ pro tempore existentibus, Salutem: Sciatis, quod Nos, virtute et secundum formam statuti, facti anno regni regalis predecessoris nostræ Dominæ Annæ nuper reginæ Magnæ Britanniæ, &c. septimo, Intitulati, "An Act for improving the Union of the two Kingdoms," assignavimus vos, et aliquos duos vel plures vestrum, (quorum aliquem vestrum præfatorum Davidis Boyle, vel Justiciarii Clerici nostri pro tempore existentis, Georgii Fergusson, Adami Gillies, Davidis Monypenny, Archibaldi Campbell, et Alexandri Maconochie, vel Commissionariorum nostrorum Justiciariæ pro tempore existentium, unum esse volumus,) Justiciarios nostros, ad inquirendum per sacramentum proborum et legalium hominum de comitatibus nostris de Stirling, Lanark, Dumbarton, Renfrew, et Ayr, et eorum quolibet, in illâ parte regni nostri uniti Magnæ Britanniæ et Hiberniæ vocata Scotland, et aliis viis, modis, et mediis, quibus melius sciveritis aut poteritis, (tam infra libertates quam extra,) per quos rei veritas meliùs sciri poterit et inquiri, de quibuscunque altis proditionibus et misprisionibus altæ proditionis, infra comitatus prædictos, vel eorum aliquem, tam infra libertates quam extra, per quoscunque et qualitercunque, et per quos, vel per quem, quando, qualiter, et quo modo factis, perpetratis, sive commissis, ac de aliis articulis et circumstantiis, præmissa et eorum aliquod vel aliqua qualitercunque concernentibus, et ad easdem altas proditiones et misprisiones altæ proditionis, secundum formam statuti prædicti, audiendas et terminandas; et ideo vobis mandamus, quod, ad certos dies et locos quos vos, aut aliqui duo vel plures vestrum, (quorum aliquem vestrum præfatorum Davidis Boyle, vel Justiciarii Clerici nostri pro tempore existentis, Georgii Fergusson, Adami Gil-

lies, Davidis Monypenny, Archibaldi Campbell, et Alexandri Maconochie, vel Commissionariorum nostrorum Justiciariæ pro tempore existentium, unum esse volumus,) ad hoc provideritis, conveniatis, et diligenter super præmissis faciatis inquisitiones, et præmissa omnia et singula audiatis et terminetis, ac ea faciatis et expleatis, facturi inde quod ad Justitiam pertinet, salvis Nobis amerciamentis et aliis nobis inde spectantibus; damus enim universis et singulis vicecomitibus, officiariis, ministris, et legeis nostris, tenore præsentium firmiter in mandatum, quod vobis in executione præmissorum intendentes, consulentes, assistentes, obedientes, et auxiliantes sint, in omnibus prout decet; mandamus etiam, tenore præsentium, vicecomitibus comitatum prædictorum, quod, ad certos dies et locos quos vos aut aliqui duo vel plures vestrum, (quorum aliquem vestrum præfatorum Davidis Boyle, vel Justiciarii Clerici nostri pro tempore existentis, Georgii Fergusson, Adami Gillies, Davidis Monypenny, Archibaldi Campbell, et Alexandri Maconochie, vel Commissionariorum nostrûm Justiciariæ pro tempore existentium, unum esse volumus,) eis scire feceritis, venire faciant coram vobis, vel aliquibus duobus vel pluribus vestrum, (quorum aliquem vestrum præfatorum Davidis Boyle, vel Justiciarii Clerici nostri pro tempore existentis, Georgii Fergusson, Adami Gillies, Davidis Monypenny, Archibaldi Campbell, et Alexandri Maconochie, vel Commissionariorum nostrorum Justiciariæ pro tempore existentium, unum esse volumus) tot et tales probos et legales homines de corpore comitatum prædictorum de Stirling, Lanark, Dumbarton, Renfrew, et Ayr, tam infra libertates quam extra, per quos rei veritas in præmissis meliùs sciri poterit et inquiri: In cujus rei testimonium, has literas nostras fieri fecimus patentes, Teste me ipso, apud Westmonasterium, vigesimo nono die Maiæ, Anno Regni Nostri primo.

Per. Brev. priv. Sig.

BATHURST.

The Great Seal of England.
(*L. S.*)

Commission in English.

GEORGE the FOURTH, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, To our right trusty, and well-beloved cousin and councillor, James Duke of Montrose, our Justice-General of that part of our United Kingdom of Great Britain and Ireland, called Scotland; or our Justice-General for the time being, our trusty and well-beloved Charles Hope, Esquire, President of our College of Justice; or the President of our College of Justice for the time being; our right-trusty and well-beloved Councillor, David Boyle, Esquire, our Justice-Clerk, or our Justice-Clerk for the time being; our right-trusty and well-beloved Councillor, Sir Samuel Shepherd, Knight, Chief-Baron of our Court of Exchequer in the aforesaid part of our said United Kingdom, or the Chief-Baron of our said Court of Exchequer, for the time being; our right-trusty and well-beloved Councillor, William Adam, Esquire, Chief Commissioner of our Jury Court in Civil Causes, or the Chief Commissioner of our Jury Court in Civil Causes for the time being; and our trusty and well-beloved George Fergusson, Esquire, of Hermand; Adam Gillies, Esquire, of Gillies; David Monypenny, Esquire, of Pitmilly; Archibald Campbell, Esquire, of Succoth; and Alexander Maconochie, Esquire, of Meadowbank, our Commissioners of Justiciary, or our Commissioners of Justiciary for the time being, Greeting: Know ye, that we, by virtue of, and according to the form of the statute made in the seventh year of the reign of our royal predecessor, Anne, late Queen of Great Britain, &c. intituled,—"An Act for improving the Union of the two Kingdoms," have assigned you, and any two or more of you, (of whom we will that any of you, the said David Boyle, or our Justice-Clerk for the time being, George Fergusson, Adam Gillies, David Monypenny, Archibald Campbell, and Alexander Maconochie, or our Commissioners of Justiciary for the time being, shall be one) our Justices, to inquire by the oath of good and lawful men of our shires, or counties of Stir-

ling, Lanark, Dumbarton, Renfrew, and Ayr, and every of them in that part of our United Kingdom of Great Britain and Ireland, called Scotland, and by other ways, means, and methods, by which you shall or may better know, as well within liberties as without, by whom the truth of the matter may be better known, and inquired into, of all High Treasons, and Misprisions of High Treason, within the shires, or counties aforesaid, or any of them as well within liberties as without, by whomsoever, and in what manner soever, and by whom, when, how, and after what manner, done, committed, or perpetrated, and of all other articles and circumstances concerning the premises, and every of them, or any of them, in any manner whatsoever, and the same High Treasons and Misprisions of High Treason, according to the form of the aforesaid statute, to hear and determine; and therefore, we command you, that at certain days and places, which you or any two or more of you (of whom we will that any of you, the aforesaid David Boyle, or our Justice-Clerk for the time being, George Fergusson, Adam Gillies, David Monypenny, Archibald Campbell, and Alexander Maconochie, or our Commissioners of Justiciary for the time being, shall be one) shall appoint for that purpose, you meet together, and diligently make inquiries about the premises, and hear and determine all and singular the said premises, and do and fulfil them, doing therein what to justice appertains, saving to us the amerciaments and other things from thence to us accruing; for we firmly command all and singular sheriffs' officers, ministers, and our subjects, by virtue of these presents, that they be attending, advising, aiding, and assisting, to you in the execution of the premises, as becomes them. We command also, by virtue of these presents, the Sheriffs of our shires, or counties aforesaid, that at certain days and places, which you, or any two or more of you, (of whom any of you, the aforesaid David Boyle, or our Justice-Clerk for the time being, George Fergusson, Adam Gillies, David Monypenny, Archibald Campbell, and Alexander Maconochie, or our Commissioners of Justiciary for the time being, shall be one) shall make known to them, they cause to come before you, or any two or more of you, (of whom we will that any of you

the aforesaid David Boyle, or our Justice-Clerk for the time being, George Fergusson, Adam Gillies, David Monypenny, Archibald Campbell, and Alexander Maconochie, or our Commissioners of Justiciary for the time being, shall be one) so many, and such good and lawful men of our said shires, or counties of Stirling, Lanark, Dumbarton, Renfrew, and Ayr, as well within liberties as without, by whom the truth of the matter in the premises may be better known, and inquired into. In witness whereof, we have caused these our letters to be made patent. Witness Ourself at Westminster, the twenty-ninth day of May, in the first year of our reign.

By Writ of Privy Seal.

BATHURST.

The Great Seal of England.
(*L. S.*)

COPY of Mr KNAPP's Appointment, as Clerk to the Commission.

SCOTLAND, to wit.—I, CHARLES HOPE, Esquire, President of the College of Justice of our Lord the King, in that part of the United Kingdom of Great Britain and Ireland called Scotland, the senior Judge and Commissioner named in his Majesty's Special Commission of Oyer and Terminer, for the shires or counties of Stirling, Lanark, Dumbarton, Renfrew, and Ayr, and every of them, issued and bearing date at Westminster, the twenty-ninth day of May, in the first year of the reign of our Sovereign Lord, George the Fourth, by the grace of God of the united kingdom of Great Britain and Ireland King, Defender of the Faith, do, in right of my being such senior Judge, and Commissioner as aforesaid, nominate and appoint Thomas George Knapp, of Haberdashers-Hall, London, Gentleman, to be Clerk of the aforesaid Commission, to do and execute the duties of Clerk to the aforesaid Commission, in all things appertaining to the same. Given under my hand and seal this sixth day of June,

in the said first year of the reign of our said Lord the King, and in the year of our Lord one thousand eight hundred and twenty.

C. Hope, S.

Copy of the Circuit Paper, as approved by the Commissioners, Scotland.—Special Commission of Oyer and Terminer, 1st George Fourth, 1820.

Stirlingshire.—Friday, June 23d, at Stirling.
Lanarkshire.—Monday, June 26th, at Glasgow.
Dumbartonshire.—Thursday, June 29th, at Dumbarton.
Renfrewshire.—Saturday, July 1st, at Paisley.
Ayrshire.—Tuesday, July 4th, at Ayr.

Stirlingshire.—Precept to Sheriff for Grand Jury.

Stirlingshire, to wit.—David Boyle, Esquire, Justice Clerk of our Lord the King, in that part of the united kingdom of Great Britain and Ireland called Scotland; George Fergusson, Esquire, of Hermand; Adam Gillies, Esquire, of Gillies; David Monypenny, Esquire, of Pitmilly; Archibald Campbell, Esquire, of Succoth; and Alexander Maconochie, Esquire, of Meadowbank; Commissioners of our Lord the King, of Justiciary, in that part of the united kingdom of Great Britain and Ireland called Scotland, Justices and Commissioners of our said Lord the King, assigned by letters patent of our said Lord the King, under the Great Seal of the united kingdom of Great Britain and Ireland, made by virtue of, and according to, the form of the Statute made in the seventh year of the reign of the Lady Anne, late Queen of Great Britain, &c., entitled, "An Act for improving the Union of the two Kingdoms," to us and others, in the same letters patent named, and to any two or more of us, and them directed (of whom our said Lord the King willed that one of us, the said David Boyle, or the Justice Clerk for the time being, George Fergusson, Adam Gillies, David Monypenny, Archibald Campbell, and Alexander Maconochie, or the Commissioners of Justiciary for the time

being, should be one,) to inquire, by the oath of good and lawful men of the county of Stirling, in that part of the united kingdom of Great Britain and Ireland called Scotland, and by other ways, means, and methods, by which we and others, our fellows, Justices and Commissioners aforesaid, shall or may better know, as well within liberties as without, by whom the truth of the matter may be better known and inquired into, of all high treasons, and misprisions of high treason, within the shire or county aforesaid, as well within liberties as without, by whomsoever, and in what manner soever, and by whom, when, how, and after what manner done, committed, or perpetrated, and of all other articles and circumstances concerning the premises, and every of them, or any of them, in any manner whatsoever; and the same high treasons, and misprisions of high treason, according to the form of the statute, to hear and determine.

To the Sheriff of the county of Stirling aforesaid, greeting—We, on the behalf of our said Lord the King, do command you, firmly enjoining you, that you do not omit, by reason of any liberty in your Bailiwick, but that you cause to come before us and others, our fellows, Justices and Commissioners aforesaid, in the said letters patent named and assigned, or before any two or more of us and them, (of whom our said Lord the King willed that one of us, the said David Boyle, or the Justice Clerk for the time being, George Fergusson, Adam Gillies, David Monypenny, Archibald Campbell, and Alexander Maconochie, or the Commissioners of Justiciary for the time being, should be one,) at the town of Stirling, in your said county, on Friday, the twenty-third day of June inst., at the hour of nine in the forenoon of the same day, twenty-four good and lawful men of your said county, to inquire, present, do, and execute, all and singular those things with which they shall be then and there charged and enjoined, and that you give notice to all Justices of the Peace, and Chief Constables, in your said county, that they be then and there in their proper persons, to do whatsoever to their respective offices in this behalf appertains to be done; and that you have then and there the names of the said Jurors, Justices of the Peace, and Chief

Constables; and also that this Precept, given under our hands and seals at Edinburgh, the sixth day of June, in the first year of the reign of our Sovereign Lord, George the Fourth, by the grace of God of the united kingdom of Great Britain and Ireland King, Defender of the Faith, and in the year of our Lord one thousand eight hundred and twenty:

D. Boyle,	D. Monypenny,
G. Fergusson,	Archd. Campbell.
Ad. Gillies.	Alex. Maconochie.

The Sheriff's return on the back of the above Precept.

"The execution of this Precept appears by the schedules hereto annexed.

"The answer of

"R. Macdonald, Sheriff Depute."

STIRLING.

23d June, 1820.

Stirlingshire.—At a special Session of Oyer and Terminer, holden in, and for the County of Stirling, at the town of Stirling, in the said county, on Friday, the twenty-third of June, in the first year of the reign of our Sovereign Lord George the Fourth, by the grace of God of the united kingdom of Great Britain and Ireland King, Defender of the Faith, before Charles Hope, Esquire, President of the College of Justice of our said Lord the King, in that part of the united kingdom of Great Britain and Ireland, called Scotland; the Right Honourable David Boyle, Esquire, Justice Clerk of our said Lord the King, in the aforesaid part of the said united kingdom; the Right Honourable Sir Samuel Shepherd, Knight, Chief Baron of our said Lord the King, of his Court of Exchequer, in the aforesaid part of the said united kingdom; the Right Honourable William Adam, Esquire, Chief Commissioner of the Jury Court in Civil Causes, in the aforesaid part of the united kingdom; and George Fergusson, Esquire, of Hermand,

and Adam Gillies, Esquire, of Gillies, two of the Commissioners of our said Lord the King, of Justiciary, in the aforesaid part of the said united kingdom, and others their fellows, Justices and Commissioners of our said Lord;

The Minister delivered a prayer to the Court and auditory;

The Cryer made proclamation and opened the Court.

Mr Thomas George Knapp, as Clerk to the Commission, informed the Lords Commissioners, that there were two commissions, one in Latin, and the other in English; they were both laid on the Table, and their Lordships directed that the English Commission should be read.

The Clerk then read the English Special Commission, of Oyer and Terminer, as directed by the Court.

James Rae, of Parliament Square, Edinburgh, was appointed Cryer of the Court; John Morison, a Macer of the High Court of Justiciary, was appointed to take care of the respective witnesses, and deliver the several bills to the Macer attending the Grand Jury; and William Green, a Macer of the Jury Court, was appointed to attend upon, and deliver the respective bills to the Grand Jury.

The Clerk laid before their Lordships a letter from Lord Sidmouth, Secretary of State, to the Lord President of the Court of Session, dated 31st May, 1820; and their Lordships directed, that such letter should be entered in the minutes of the Court.

The following is a copy of such letter:

"*Whitehall*, 31*st May*, 1820.

"My Lord,

"His Majesty, having been pleased to issue a Commission of Oyer and Terminer, under the Great Seal of Great Britain, for the trial of High Treasons, in the shires of Stirling, Lanark, Dumbarton, Renfrew, and Ayr, directed to the Lord Justice General, your Lordship, the Lord Justice Clerk, the Lord Chief-Baron, the Lord Chief-Commissioner of the Jury Court, and the five Lords of Justiciary, of whom, any two are competent to form a Court, provided the Lord Justice-Clerk, or one of the Lords of Justiciary, be one,—I am to signify to your Lordship, the King's pleasure,

that the business of this Commission shall be transacted so as to interfere as little as possible with the ordinary business of the Courts of Law in North Britain; and with this view, not more than two of the Lords of Justiciary, besides the Lord Justice-Clerk, shall sit at any one time, which two shall be the two seniors, if health and other circumstances shall permit, and in default of either of them, his place shall be supplied by the next in seniority.

"I have the honour to be,

"My Lord,

"Your Lordship's most obedient, humble servant,

"SIDMOUTH."

The Cryer made proclamation for the Sheriff, to deliver his returns to their Lordship's precept.

The Sheriff delivered in to the Senior Judge, that precept and his returns thereon, which were delivered by the Judge to the Clerk.

The returns consisted of a Calendar of all the prisoners; a list of the Magistrates of Stirlingshire, and a list of the Grand Jury, all on parchment, with a return that there were no high constables in that county.

The Clerk then called over the names of the Justices, and marked those who appeared, and answered to their names.

The Cryer made proclamation for the attendance of the Grand Jury.

The Clerk then called over the names of the Grand Jury, and marked the numbers on the pannel against the names of those who appeared; the Cryer repeating those names.

They were as follows:—The Honourable Mr Abercromby having been previously approved of and appointed Foreman by the Court:

1. The Honourable GEORGE ABERCROMBY.
2. Sir THOMAS LIVINGSTONE, Bart.
3. Sir JAMES RIDDELL, Bart.
4. PETER SPIERS, Esq.
5. WILLIAM MOREHEAD, Esq.
6. NINIAN LEWIS, Esq.

7. Samuel Cooper, Esq.
8. James Bruce, Esq.
9. George Callander, Esq.
10. Francis Simpson, Esq.
11. Alexander Gartshore Stirling, Esq.
12. John Henderson, Doctor of Physic.
13. John Baird, Esq.
14. John Kincaid, Esq.
15. William Archibald Cadell, Esq.
16. Alexander Littlejohn, Esq.
17. Patrick Muschet, Doctor of Physic.
18. John Murray, Esq.
19. James Russell, Esq.
20. Duncan Robertson, Esq.
21. Joseph Stainton, Esq.
22. Thomas Campbell Haggart, Esq.
23. Alexander Ramsay, Esq.

R. Macdonald, Esq. *Sheriff.*

A pannel of the above names was made out, and signed by the Sheriff in Court.

The Clerk administered the following oath to the Foreman of the Grand Jury, previously requiring the attention of the other Grand Jurors to their Foreman's oath.

"You shall diligently inquire, and true presentment make, of all such matters and things as shall here be given you in charge, or otherwise come to your knowledge, touching this present service. The King's Majesty's Council, your own, and your fellows, you shall well and truly keep secret. You shall present no person for hatred, malice, or ill-will; nor leave any thing unpresented for fear, favour, or affection, or for any reward, hope, or promise thereof: But in all your presentments, you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and knowledge. So help you God."

The remaining members of the Grand Jury were then sworn four at a time, as follows:—

"The same oath that Mr Abercromby, your foreman, hath now taken before you on his part, you and every of

you shall well and truly observe and keep on your respective parts. So help you God."

The Cryer made proclamation for silence, whilst his Majesty's proclamation should be read.

The Clerk read his Majesty's proclamation against vice, profaneness, and immorality.

The Cryer made proclamation for silence, whilst the charge was delivered to the Grand Jury.

Charge.

Lord President.—Gentlemen, We are met here, under his Majesty's commission, to take trial of all treasons, and misprisions of treason, which may have been committed within this county; and I believe it is customary, on such occasions, for the presiding Judge to address the Grand Jury, before they retire to consider the bills of indictment which are to be laid before them.

In our situation, where we have to discharge a duty which may be said to be new to most of us, it may be particularly useful to take a view of the law, which we are now called upon to administer.

Trials for treason have been of very rare occurrence in this country. Not that we have been without materials in Scotland; for the two rebellions in 1715 and 1745 furnished a numerous list of traitors; but, by special statutes, the trials then all took place in England.

The cases of Watt and Downie, in 1794, are, I believe, the only trials for treason which have taken place in Scotland since the Union.

You know, Gentlemen, that, by the treaty of Union between this country and England, in 1707, it was most anxiously stipulated and provided, on the part of Scotland, that our municipal laws should be preserved entire. But, at the same time, as we were thereafter to become one people, —united under the same legislature,—governed by the same sovereign,—receiving from him the same protection, and, therefore, owing to him the same allegiance,—it was foreseen, that some provision must be made for regulating that

allegiance, and for punishing the breach of it. It was therefore declared, by the same article of the treaty of Union which saved our civil institutions entire, "That the laws which concern public right, policy, and civil government, may be made the same throughout the whole united kingdom."

In regard to the law of treason, this might have been done in three ways: either by compounding and digesting the treason-laws of both countries into a new code, to be common to both; or, by declaring, that the treason-law of Scotland should be the law of the united kingdom; or, that the treason-law of England should also govern Scotland.

The last mode was adopted, and wisely adopted; and, therefore, immediately after the Union, the act of 7th Queen Anne, cap. 21. was passed, by which it was enacted in substance, that the law of England, in regard both to the crime of treason, and misprision of treason, and to the form of trial for them, should, in future, be the law of Scotland as to treason, or misprision of treason, committed against the common sovereign.

Gentlemen, as to the form of trial, Scotland did not gain much by this change, for we already had a most admirable form of trial; by which every prisoner, accused of ordinary crimes, has as great advantages as the law of England indulges to persons accused of high treason.

By the law of Scotland, you know, that every prisoner must have a copy of his indictment, with a list of the jury and witnesses, fifteen days before his trial; and he is entitled to counsel to assist him in his defence, both on the fact and the law.

By the law of England, it is only in the case of treason that a prisoner is entitled to a copy of his indictment, and a list of the jury and witnesses, and that, too, only ten days before his trial; and it is a curious circumstance, that this indulgence, which we, in Scotland, consider as essential to a fair trial, one of the ablest, and most upright, humane, and constitutional Judges that ever sat on the bench in England, considers as of very doubtful expediency.

But then, Gentlemen, by the law of England it is farther

provided, that no man shall be indicted for the crime of treason, except on a bill found against him by a Grand Jury; and that the prisoner, when afterwards put on his trial, shall have right to challenge a certain number of the jury, without assigning any reason for it;—privileges, these, of no great moment in the case of ordinary crimes beween man and man, but which may be considered as of considerable importance, in the case of crimes committed in breach of the allegiance due from the subject to the sovereign.

But, while the advantage which we have gained in the form of trial is less material, that which we have gained, by adopting the English law of treason, in other respects, has been most important. The old Scots law of treason was by no means well defined; and it was much more severe and sanguinary than that of England, which had been well matured, and narrowed within limits as confined as seems to be at all consistent with the safety of the State.

What the old law of Scotland was, in regard to treason, it is now unnecessary for us to inquire; but whoever takes that trouble, will be sensible of the advantages which in this, as in all other respects, Scotland has derived from the union with England.

The law of treason, with which we have now to do, has continued nearly the same since the days of Edward the Third.

The statute of the 25th year of that great King, cap. 2. is the basis of the law of treason.

By the first branch of that statute, it is declared to be treason, "when a man doth compass, or imagine, the death of our Lord the King, or of our Lady the Queen, or of their eldest son and heir."

At first sight, Gentlemen, this law may appear to be severe; inasmuch as it punishes, not the actual killing of the King, but even the purpose and intention of doing so. But the legislature was well aware of, and contemplated, the confusion and horrors which must, almost necessarily, arise from the violent death of the King; and, therefore, it was thought wise and prudent to check those dangers in the bud, and to prevent, as far as possible, the most distant approach to any

attempt on his life. It contemplated, that the life of the King is, in fact, the safety of the State; and, therefore, that it ought to be guarded with much greater vigilance, and with stronger barriers, than the life of any other person in the realm.

But although the principle be carried a little farther in the case of treason, it is, in reality, the same principle which is at the bottom of all criminal jurisprudence.

It never is the mere act, but the criminal intention with which it is committed, which is the object of punishment.

Take the case of killing an ordinary man.

A man is not punished merely for killing another, unless he has done so with an intention more or less criminal.

A man, on his trial for murder, may admit that he killed the deceased, but, although his doing so will be presumed to be done with a murderous intention, he will be allowed to prove that it was otherwise; and if he prove, that it was by pure accident, he will be altogether acquitted, for want of the criminal intention. Nay, though he killed him wilfully, yet if he prove that it was in strict self-defence, he will also be acquitted, from the same want of criminal intention. Or if he prove gross provocation, it will mitigate the criminal intention, and reduce the case, in the scale of guilt, from murder to man-slaughter, or culpable homicide.

Gentlemen, the same may be shewn to be the case in all crimes whatever. It is not the act done, but the criminal intention with which it is done, that is the object of punishment.

In ordinary crimes, however, Gentlemen, you know that the criminal intention must be carried into full effect before it can be punished to the full extent. To constitute murder, there must not only be an intention to murder, but a man must be actually killed. To constitute theft or robbery, there must not only be the felonious intention, but the theft or robbery must be actually accomplished.

If these crimes have not been actually accomplished, though the criminal may have been prevented by the merest accident, it is not murder or robbery; but, even in all such cases, the criminal intention will be punished, under the

name of a lower denomination, and according to the degree of criminal intention indicated by the event.

But, in regard to the life of the King, the law will not allow it to be tampered with; it will not allow it to be put even into remote danger, by the wicked imagination of the traitor. "The law," says Foster, the most approved author on this subject,—"the law tendereth the safety of the King with an anxious, and, if I may use the expression, with a concern bordering on jealousy. It considereth the wicked imagination of the heart in the same degree of guilt as if carried into actual execution, from the moment that measures appear to have been taken to render them effectual."

These last words lead me to remark to you, that, even in regard to the sacred life of the King, the law is not so unjust or severe, as to punish naked intention alone, if confined to the breast of the party; for the statute adds, in regard to this treason of compassing and imagining the death of the King, that the offenders "shall thereof be proveably attainted of open deed, by the people of their condition;" that is, according to the interpretation and language of all modern lawyers, the intention against the life of the King must be manifested by some overt act, which is to be proved by sufficient evidence before a jury of their country.

Indeed, it is not easy to see how such intention, which is of the heart, and, therefore, known to God alone, can be satisfactorily proved to a human tribunal, except by some overt act, clearly indicative of that intention. And if such intention be truly indicated by the overt act, it is expressly laid down by Forster, that it matters not though the overt act should only be one of remote tendency and preparation to the crime.

This, then, Gentlemen, being the undoubted law of the land, 1*mo*, That it is treason to compass and imagine the death of the King; and 2*do*, That every overt act, however remote in its tendency, which clearly indicates such treasonable purpose in the mind, is sufficient to bring the offender within the enactment of the statute; it seems not to be very necessary to specify any particular overt acts, which have been held to be sufficient to prove the treasonable in-

tention, because it is obvious, that such overt acts may be as various as criminal ingenuity can invent, for accomplishing or forwarding such treasonable purpose, and indeed must necessarily vary with the nature of every plot or conspiracy in which they originate.

It may, however, be satisfactory to you, that I should mention a few overt acts, which have been held to amount to treason under this branch of the statute. For instance, to lie in wait in order to attempt the life of the King, though he should have gone another road, or not moved from his palace that day; to provide arms, or prepare poison for his destruction; to assemble and consult how he may be killed, though the meeting should separate without coming to any fixed resolution; nay, the mere presence at such a meeting, if the purpose of it was previously known, and concealing the object of it; though the person took no part in the deliberation, has been found to be treason. So to offer money to another to kill the King, is treason, even though the money should be refused; or the giving of special instructions how he may be killed, or in any manner or way, instigating, or encouraging another in any course, or mode, (though originally devised by that other) for taking away the life of the King, is also treason.

Indeed, Gentlemen, so much is it the treasonable intention against the life of the King, which it is the object of the law to repress and punish, that you will observe that the statute does not say one word in regard to the actual killing of the King. Accordingly, on the restoration of Charles the Second, when the regicides were to be tried for the murder of his father, Charles the First, they were not indicted for killing that King, but for compassing and imagining his death; and the fact, of having actually beheaded him, was laid as the overt act, to prove the compassing and imagining his death; for, without such compassing and imagining, the killing of the King would not be treason, nor even murder. For example, Sir Walter Tyrrell, you know, actually killed William Rufus; but he could not have been convicted of treason under this statute, if it had then existed, nor even of murder at common law, because it was purely accidental,

in the prosecution of a lawful amusement, in which the King had authorised his subjects to join with him.

For the same reason, that it is the compassing and imagining the death of the King, which constitutes treason, and which it is the object of the law to repress, an overt act may be treason under this branch of the statute, which would not be an overt act under the other branch of levying war against the King, though in appearance more nearly allied to it.

Thus, a mere conspiracy to levy war, when no war has been actually raised, cannot be charged as a levying of war, but it may be charged, and has always been sustained, as an overt act, to prove the compassing and imagining the King's death; for no man can conspire to levy war against the King, without distinctly having the death of the King in his imagination, as the probable, I may almost say, as the necessary result of that conspiracy, if successful; for when subjects conspire to make war on their King, and prove successful, they may be said to be driven to the necessity of putting him to death for self-preservation, for they never could believe that the King would forgive them. Such, accordingly, has been the result in every instance of successful rebellion in this country, as in the cases of Edward the Second, Richard the Second, Henry the Sixth, and Charles the First.

For the same reason, it is an overt act of treason within this statute, to enlist men to depose the King, to fortify a house or castle to resist his forces, or to take any measures for imprisoning him, or forcibly taking possession of his person; for, as Judge Foster says, "Experience has shewn, that between the prisons and the graves of Kings, the distance is very small."

In the same manner, holding consultations, or taking measures for raising an insurrection, if the object be directed against the King's authority, as to compel him to alter his measures, to dismiss his counsellors, to submit to demands for reformation, or, in general to compel him to adopt, or to restrain him from adopting, any measure, which it is part of his prerogative to do or not, as he judges proper:—All such purposes, if attempted by force, are treason under the statute; for it is justly observed by Hale, one of the ablest

judges, and most constitutional lawyers we ever had, "That it is a kind of natural and necessary consequence, that he who attempts to conquer or subdue the King, cannot intend less than to take away his life."

Gentlemen, many other observations might be made, and illustrations given on this branch of the statute; but as I am not aware that they could be of use to you in the discharge of your duty, I shall not enlarge farther on this part of the subject.

It is only necessary for me to mention, that the statute of Edward the Third, has been explained, and in a slight degree extended; at least the law has been made more explicit, by an act passed in the thirty-sixth year of the late King, chap. vii. which was passed on an occasion of an outrage offered to his Majesty's person.

This statute was at first temporary, but has since been made perpetual by fifty-seventh, George the Third, chap. vi.

By this act it is made treason, "To compass, or imagine, invent, devise, or intend death or destruction, or any bodily harm, tending to death or destruction, maim, or wounding, imprisonment, or restraint, of the person of our Sovereign Lord the King."

This statute is very similar, both in its words and substance, to the Scots act, 1662, chap. ii. and was probably copied from it.

It seems more calculated, however, to remove doubts and scruples, which might have been entertained, as to the degree of violence necessary to constitute treason, under the statute of Edward the Third, than to introduce any new species of treason; at least, it humbly appears to me, that it is not easy to conceive an overt act under the one, which would not be treason under the other.

Gentlemen, this late statute, like the old one, requires that the party shall give some effect to the imagination of the heart. He must express, utter, or disclose his intention, by publishing some printing or writing, or by some overt act or deed. And I may here mention, what is applicable to all treasons, that some one overt act must be proved to have taken place within the county wherein the bill of indictment

is preferred. If this be done, the proof of the other overt acts in other counties is to be received as competent to support the indictment, for otherwise a man might run from one county to another, committing treason in them all, and yet it might be difficult to convict him of it in any one of them.

Gentlemen, the next species of treason which it is necessary for me to mention, is, that of levying war against the King. By the act of Edward the Third, it is declared to be treason, " If a man do levy war against our Lord the King in this realm."

This has been considerably extended by the late act, already mentioned, of the thirty-sixth, George the Third, by which it is declared to be treason, " To compass, imagine, invent, devise, or intend to levy war against the King within this realm, in order, by force or constraint, to compel him to change his measures and counsels, or in order to put any force or constraint upon, or overawe both or either House of Parliament."

By these acts you will perceive, 1*mo*, That it is not only treason actually to levy war against the King; but, 2*do*, Also, as in the case of his life, it is treason even to compass or imagine, invent, devise, or intend the levying of war against him, provided the object be, either to compel the King to change his measures, or to overawe or constrain either House of Parliament.

It is only necessary, therefore, to consider what is to be held a levying of war, the actual raising of which, under the act of Edward the Third, or the compassing and imagining it, under the act of George the Third, will constitute treason.

Now, all our writers and lawyers agree, that, in order to constitute this species of treason, it is not necessary that the people so levying war should appear in the shape of regular troops, divided into battalions, and regularly clothed, armed, and disciplined. Rebellion and insurrection, from the very nature of the case, can seldom assume such appearance at first, though a little success may soon enable them to assume all the array and discipline of regular armies. Of this we had a memorable example in our rebellion in 1745. When Prince

Charles, commonly called the Pretender, landed in the west, he was for some time joined only by a few half-armed and half-naked Highlanders; and yet there can be no doubt, that he and his associates were as much guilty of treason the first day he raised his standard at the head of Lochshiel, as when he gained the victory at Prestonpans, and was thereby enabled to arm and clothe his followers, and give them more the appearance of a regular army.

Therefore, Gentlemen, however ill arranged, however ill disciplined or armed the people may be, there is no doubt that every rising or insurrection, for the purpose of effecting, by force and numbers, any innovation of a public nature, or to redress any public grievance, real or imaginary, things which can only be lawfully and constitutionally accomplished by the King's authority, or that of Parliament, is treason, as an actual levying of war; and consequently to compass or imagine such a rising or insurrection for such purposes, will be to compass and imagine the levying of war against the King under the late statute.

What overt acts will be sufficient to indicate such traitorous intention to levy war, it is almost impossible to define, for they may be infinitely various. But in cases where the insurrection has not actually broke out, the overt acts most likely to happen, are meetings and consultations about the intended insurrection, and the means of promoting it—instigating or overawing others to join, by private threats and arguments, or by open proclamation—associations and agreements for that purpose—making or providing arms or ammunition of whatever kind, intended to be used in the insurrection. All these, and similar matters, are held to be competent overt acts, to prove the compassing and imagining the levying of the war to which they apply.

Gentlemen, it may be useful to say a few words on the distinction between levying war against the King, and committing a riot. The distinction seems to consist in this, although they may often run very nearly into each other.

Where the rising or tumult is merely to accomplish some private purpose, interesting only to those engaged in it, and not resisting or calling in question the King's authority or

prerogative, then the tumult, however numerous or outrageous the mob may be, is held only to be a riot; for example, suppose a mob to rise, and even by force of arms to break into a particular prison, and rescue certain persons therein confined; or to oblige the magistrates to set them at liberty; or to lower the price of provisions in a certain market; or to tear down certain inclosures, which they conceive to encroach on the town's common. All such acts, though severely punishable, and though they may be resisted by force, do not amount to treason. Nothing is pointed against either the person or authority of the King. For this reason, after the most mature consideration, the outrageous proceedings of the mob of Edinburgh, in the affair of Porteous, were held not to amount to treason, and the few persons who were tried, were tried only as for riot; because, although there was in that case an interference with the royal prerogative of mercy, yet, as it was only directed against the exercise of it in that individual case, and did not in any degree go to impeach or resist his Majesty's general exercise of it in other cases, it was determined to proceed against those accused only as for riot, and not as for treason.

But, Gentlemen, wherever the rising or insurrection has for its object a general purpose, not confined to the peculiar views and interests of the persons concerned in it, but common to the whole community, and striking directly against the King's authority, or that of Parliament, then it assumes the character of treason. For example, if mobs were to rise in different parts of the country, to throw open all inclosures, and to resist the execution of the law regarding inclosures wheresoever attempted; to pull down all prisons or courts of justice; to resist all revenue officers in the collecting of all or any of the taxes; in short, all risings to accomplish a general purpose, or to hinder a general measure, which by law can only be authorised or prohibited by authority of the King or Parliament, amount to levying of war against the King, and have always been tried and punished as treason.

It is, therefore, not the numbers concerned, nor the force employed by the people rising in arms, but the object which

they have in view that determines the character of the crime, and will make it either riot or treason, according as that object is of a public and general, or private and local nature.

Gentlemen, it is also proper that I should take notice of one species of overt act, which has created more difficulty than any other, and as to which, in former times, some decisions were given which are now universally held to be against law—I mean, Words and Writings.

As to these the law seems now to be settled, that mere words spoken, however wicked and abominable, if they do not relate to any act or design then actually on foot against the life of the King, or the levying of war against him, and in the contemplation of the speaker, do not amount to treason, though they may be otherwise severely punished; for example, if a man were openly to declare in so many words, that the King ought to be killed, and that it would be meritorious to do so.

This would be a great crime and severely punishable, but it would not be treason, unless it were proved that the man had in contemplation some plot, either of his own or of others, then actually in progress for that purpose. But words spoken in consultation or debate with others, as to killing the King by any particular means, or at any given time or place, these unquestionably amount to an overt act or treason.

The same may nearly be laid down as to writings. A treatise to prove that all kings are tyrants, and therefore ought to be killed, especially if never divulged or published, does not amount to treason; and, therefore, the decision in the case of Algernon Sidney is now held to be against law; for, in that case, certain papers found in his private desk, and unpublished, were laid as a substantive overt act of treason.

On the other hand, all writings, though unpublished, and much more if they have been published, will amount to an overt act of treason, if they are in furtherance of any treasonable measure then in actual preparation. Thus it was held in the case of Lord Preston, that letters and papers containing the detail of a plan of an invasion by the French,

might be laid and read as evidence of an overt act of compassing and imagining the King's death, though they were never proved to have been communicated to the enemy.

So the writing or printing, or causing to be written or printed, any proclamations, not recommending rebellion and insurrection generally, but exciting the people to rise at a particular time and place for a general purpose, is unquestionably an overt act of treason, under one or both of the branches of the above acts, according as the proclamation may be worded.

And, Gentlemen, I need scarcely add, to persons of your education and knowledge, that all persons concerned in distributing, posting, or placarding such proclamations, if aware of the contents of them, are equally guilty of treason, as the authors or printers; indeed, in so far as dangerous consequences go, they are more guilty; for such proclamations would produce but very limited mischief, if persons were not found to give them publicity and circulation.

It is now proper for me to add, what however is probably known to you all, that in treason there are no accessaries. All who become partakers in the traitorous project, whether at an early or a late stage of it, whether as leaders or followers, whether they engage for the whole plot, or only to execute a particular part of it, are guilty of treason, provided that the part which they do undertake relates strictly and properly to the forwarding and accomplishing the grand object in view by the rest of the conspirators.

It now only remains for me to say a few words on the preliminary steps in a process of treason.

You know, Gentlemen, that here in Scotland, in ordinary crimes, the preliminary examinations, or the precognition, as we call it, is laid before his Majesty's Advocate, and that he determines, according to the best of his judgment, whether there be sufficient grounds to put the accused on his trial. And in such ordinary crimes occurring between man and man, in which the government of the country cannot have the smallest conceivable interest, except to preserve the lives and properties of the people, there does not seem to be any

reasonable objection to this course of proceeding. Accordingly, in practice, no inconvenience to the public and no hardship to individuals have been found to result from it, while, on the contrary, many and great public benefits obviously arise from our prosecutions for crimes being all at the instance of a public prosecutor, and all conducted at the public expence.

But it is easy to conceive that the case might be different in the crime of treason, and therefore the subjects of Scotland have in this particular gained a considerable advantage by adopting the treason laws of England. Since the Union, therefore, no indictment for treason can be brought against any person at the instance of his Majesty's Advocate. The bill of indictment must first be exhibited to a grand jury, who, in their own presence, examine the witnesses adduced to support the charge, and find or reject the indictment according to the result of that examination.

The law of England also requires, not only that a man shall not be convicted of treason, but even that he shall not be indicted for it except on the oaths of two witnesses. In ordinary crimes in England, the evidence of one credible witness is held to be sufficient. But this never was the law of Scotland, which, at all times, and in every crime, has required the evidence of two witnesses, which, you know, is also agreeably to the law of Moses. In the law of treason, therefore, as far as relates to evidence, England seems to have copied from us, or at least has adopted the same principle, and has evidently changed for the better.

Therefore, if treason is to be proved against the accused by his accession to one specific fact or overt act, that fact or overt act must be proved by at least two witnesses.

But where the treason is to be made out against him by his accession to two or more overt acts, it is not necessary that each separate overt act should be proved by two witnesses—one witness, in that case, to each overt act, is by law sufficient. This is declared by the act of King William, and has been so found both by judges and juries again and again.

And this is no more, Gentlemen, than a branch of the principle to which we are all daily accustomed, in all cases of circumstantial evidence. Take a case of murder. If the murder is to be proved merely by evidence, that the accused was actually seen to commit it, then, by our law, there must be two witnesses of the fact; and if there be only one, though he be ever so positive and credible in the account he gives of the murder, and of the way and manner in which he came to see it committed, yet the accused must be acquitted.

But where the murder is to be proved, not by direct ocular testimony, but by a variety of circumstances, all tending to produce a conviction that the accused did commit the crime, then it is not necessary that each of those facts and circumstances should be proved by two witnesses. If each fact or circumstance be proved by one witness, it has always been held by courts and juries to be sufficient; so in the case of treason, where the general charge of treason is to be made out, by the accession of the accused to a variety of overt acts, it is enough if each of the overt acts be proved against him by one witness.

Indeed, this kind of proof, called circumstantial proof, is generally and justly considered as more satisfactory than one by direct ocular testimony, because this last depends entirely on the fidelity of the witness; whereas, in a circumstantial case, the facts hang together in such a manner as, of themselves, to lend credit to the witnesses who swear to them.

It is necessary, however, in a case of treason, which is to be made out by a proof of a variety of overt acts, that each overt act depending on the testimony of one witness, should be of the same species of treason. Thus, if a man be indicted for compassing and imagining the death of the King, he cannot be indicted or convicted by one witness swearing to one overt act tending to prove that species of treason, and by another witness swearing to another overt act, indicative of the other species of treason, of levying war against the King. The links of the chain do not here hang together. The one act is not necessarily connected with the other, for it is quite possible to conceive a design against the life of the

King, by some private and secret means, totally unconnected with the open levying of war.

The overt acts, therefore, which, being each proved by one witness, are sufficient to support an indictment for treason, must be all overt acts of the same kind of treason.

Gentlemen, it is necessary, however, to mention one limitation of this rule, which is, that it is only the overt acts laid in the indictment, which, if taken as a substantive proof of guilt, require two witnesses; for minor and collateral facts, by the common law of England, and, of course, of Scotland, in matters of treason, and indeed in other crimes, may still be proved by a single witness; for instance, that the prisoner is a natural born subject, and not an alien; that he was at a particular place at a particular time; that he was dressed or disguised in a particular manner; all these, and such like collateral facts and circumstances, not in themselves overt acts of treason, at least not charged as such, though perhaps very material in connecting the prisoner with the overt acts of treason charged against him, may be competently proved by a single witness.

I believe, Gentlemen, it will only be necessary for me further to add, what, however, I have no doubt you will sufficiently apprehend without any information from me, that in discharging your duty, it is not necessary for you to go so nicely and critically to work, as the petty jury must afterwards do on the trial of the prisoners, if you shall find bills against them.

It is not necessary to justify your finding a true bill of indictment, that you should be completely satisfied of the guilt of the accused. It is enough if you see such strong ground of suspicion against them, arising out of the examinations before you, as to render it proper that they should be put on their trial.

In this instance, your duty, Gentlemen, resembles that of his Majesty's Advocate. You will hear at present nothing but the evidence for the crown against the prisoners. What they may have to say in defence, neither you, nor the Lord Advocate, can know, and you cannot compel the prisoners

to disclose it to you. They have the advantage of reserving that for their trial; so that it may well happen, and often does happen, that a grand jury may have the best grounds for finding a bill of indictment, and yet that the prisoner, on his trial, may be most justly acquitted. The one verdict will be no impeachment or slur upon the other.

I am not sensible, Gentlemen, that I can add any thing else which can be of use to you; and, therefore, you will retire, and consider the bills which are to be laid before you on the part of the crown, remembering, that however you may be already convinced, from what you have heard, or perhaps from what you have seen, that treason has been committed; the question, whether the persons accused are reasonably charged with having committed it, cannot be solved by such general knowledge, but must be determined solely from the evidence now to be laid before you, as applicable to the case of each individual prisoner.

The Court ordered that a copy of the names of the Grand Jury should be made and delivered to the Foreman, and another copy to the Agent for the Crown, to annex to the caption; and copies of the indictment to be delivered to the respective prisoners indicted.

John Morrison was then sworn to deliver the several bills of indictment received from the Court, and to attend the several witnesses as they were sworn to the Grand Jury.

The Court directed Mr Thomas George Knapp, the Clerk to the Commission, and Messrs Robert Sconce, and Robert Campbell, Procurators Fiscal, to attend the Grand Jury on the examination of witnessses on all the indictments to be preferred.

The Grand Jury then retired to consider the respective bills to be laid before them.

The Cryer then called his Majesty's Advocate for his Majesty's interest, who appeared.

The Cryer then required the appearance of all persons bound to give evidence against the several prisoners charged with high treason, and misprision of treason.

The witnesses whose names were indorsed on the back of the several bills of indictment presented, were then sworn in Court to give evidence before the Grand Jury. Those witnesses that preferred being sworn after the English manner, were severally sworn by the Cryer; those that requested to be sworn in the Scotch form, were severally by the Lords Commissioners in rotation, each person repeating the words of the Scotch oath after the Commissioner had pronounced them. Several took the oath at the same time.

All the Grand Jury attended the Court, and their names being called over, the Foreman presented a true bill against the following persons. The Jury first consenting, by their Foreman, that the Court might alter matters of form, not altering matters of substance, without the consent of the Grand Jury.

Bonnymuir Case.

Thomas M'Culloch,
Andrew Hardie,
Benjamin Moir,
Allan Murchie,
Alexander Latimer,
Alexander Johnston,
Andrew White,
David Thomson,
James Wright,
William Clackson, otherwise called William Clarkson,
Thomas Pike, otherwise called Thomas Pink,
Robert Gray,
James Clelland,
Alexander Hart,
John Baird,
John Barr,
William Smith,
Thomas M'Farlane.

The above eighteen defendants were then put to the bar, and their several names were called over by the Clerk, and,

on being severally asked, respectively stated their names to be the same as described in the indictment; they were then informed by the Lord President that a bill of indictment for high treason had been found against them: That they were entitled to have two Counsel each to defend them, and that the Court would assign them any two that they should name. And at the request of all the eighteen defendants, Messrs David Blackie and William Alexander, of Edinburgh, Writers to the Signet, were approved and appointed, by the Court, as the joint solicitors, or agents for the several defendants. And it was ordered they should have free access to the defendants, and each and every of them at all seasonable hours; and Messrs Blackie and Alexander residing at Edinburgh, it was ordered that Messrs Colin Dawson and Robert Haldane, of Stirling, writers, should be permitted to act as assistant agents to the several defendants, during the absence of Messrs Blackie and Alexander.

The following is a copy of the order:—

The King against Thomas M'Culloch and seventeen others.

I, Charles Hope, Esquire, President of the College of Justice of our Lord the King, in that part of Great Britain and Ireland called Scotland, one of the Justices and Commissioners named in his Majesty's Special Commission of Oyer and Terminer, for the said county of Stirling, Do, upon the request of the said defendants in this prosecution, order and direct that David Blackie and William Alexander, of Edinburgh, gentlemen, the joint solicitors, or agents, for the several defendants, shall have free access to the said defendants, and each and every of them, at all reasonable hours, agreeably to the statute in such case made and provided. Dated this twenty-third day of June, 1820.

C. Hope.

Messrs Colin Dawson and Robert Haldane, of Stirling, writers, are to be permitted to act as assistant agents to the prisoners, during the absence of Messrs Blackie and Alexander.

C. Hope.

John Peter Grant, Esq. and Francis Jeffrey, Esq. were then assigned as Counsel for the several defendants, Thomas M'Culloch, Benjamin Moir, Alexander Latimer, Alexander Johnston, Andrew Wright, David Thomson, James Wright, William Clackson, *alias* Clarkson, Thomas Pike, *alias* Pink, Robert Gray, Alexander Hart, John Barr, William Smith, and Thomas M'Farlane; and in case either Mr Grant, or Mr Jeffrey, should not be able to attend, Mr Robert Hunter was approved as Counsel for the defendants, in the room of such one of the Counsel assigned, as should be absent, or prevented from attending the arraignment, trial, or respective trials, of these several defendants.

Messrs Grant and Jeffrey were also assigned as Counsel for the defendants, John Baird, James Clelland, Andrew Hardie, and Allan Murchie; and in case either Mr Grant or Mr Jeffrey should not be able to attend the arraignment, trial, or respective trials of these defendants, Mr John Archibald Murray was approved of as Counsel in the room of the one that should be so absent.

On the motion of Mr Serjeant Hullock, an order was made that the Sheriff deliver to the agent for the crown a list of the Jury to serve on trials for this county, under this commission, together with their respective addresses and professions.

The following is a copy of the order made:—

The King against Thomas M'Culloch and others.

It is ordered, that the Sheriff of the county of Stirling do forthwith deliver to Mr James Arnott, the solicitor, or agent for the prosecutions, a list of persons qualified to serve on Juries upon trials, for high treason, and misprisions of high treason, to be returned by the said Sheriff, as the Jury for the tr[illegible] all the defendants indicted, or to be indicted, for high t[illegible]on, or misprision of treason, under this commission; and each of them mentioning the names, professions, and places of abode of the said Jurors, in order that a copy of such list may be delivered to each of the said defendants, at

the same time that a copy of the indictment is delivered to them. On the motion of Mr Serjeant Hullock.

By the Court,

KNAPP.

The several eighteen defendants being present, a copy of the caption of the Court, a copy of the indictment, a list of the witnesses, containing their names, professions and places of abode, were then delivered to each of the said eighteen defendants in Court.

The Court then adjourned till Saturday, the 24th instant, at nine o'clock in the forenoon.

Saturday, June 24, 1820.

The Court met at nine o'clock forenoon, and was opened by the Cryer.

PRESENT.

The LORD PRESIDENT,
The LORD JUSTICE CLERK,
The LORD CHIEF BARON,
The LORD CHIEF COMMISSIONER ADAM,
Lords HERMAND and GILLIES, the two Lords Commissioners of Justiciary.

The names of the Grand Jury were called over.

The Foreman of the Grand Jury, in their name, requested the Lord President to permit his address, yesterday delivered to the Grand Jury, to be published, to which his Lordship consented, and stated it should be published as soon as he had delivered his address in the four other counties named in the commission.

The witnesses sworn:

When William M'Manus was about to be sworn as a witness, it was observed that he appeared to be very young.

Mr Serjeant Hullock.—By the law of England, we have nothing to do with the question of a witness's age, provided he understand the nature of an oath.

Lord President.—William, you understand the nature of an oath,—that it is taking God Almighty to witness the truth of what you say, and calling upon him to punish you if you say what is not truth?

Witness.—Yes.

Lord President.—And you understand you are liable to be punished for perjury in this world, if you tell other than the truth?

Witness.—Yes.

The witness was then sworn with others.

William Henry Burn, another boy, was also questioned as to his knowledge of the import of an oath.

Lord President.—You understand the nature of an oath, my little man?

Witness.—No, sir.

Lord President.—You call upon God to witness what you say, and to punish you if you tell a lie—Do you understand that?

Witness.—Yes.

Lord President.—You have been in church, and have been taught religion?

Witness.—Yes.

Lord President.—You know that telling a lie is a great sin?

Witness.—Yes.

Lord President.—In taking an oath here, you are calling on God to witness to the truth of what you say, and punish you if you do not tell the truth. Do you understand that?

Witness.—Yes.

Lord President.—And that you shall be punished if you do not tell the truth?

Witness. Yes.

The oath was then administered.

THE KING,

AGAINST

John M'Millan,
James Burt,
Andrew Burt, jun.
Daniel Turner,
James Aitken, of Falkirk, grocer,
Andrew Dawson,
Not in custody. Peter M'Callum.

It is ordered, that William Wright, the elder, William Wright, the younger, and James Dewar, prisoners confined in the castle of Stirling, on a charge of high treason, be admitted witnesses for the prosecution; and that the governor, or commanding officer of the garrison of the said castle, do forthwith convey the said William Wright, the elder, William Wright, the younger, and James Dewar, before the Grand Jury, to give evidence on a bill of indictment against John M'Millan, and the seven other defendants, for high treason; and, if the same be found a true bill by the Grand Jury, then that the said governor, or commanding officer, of the said garrison, do have the bodies of the said William Wright, the elder, William Wright, the younger, and James Dewar, in this Court, to give evidence on the trial of this indictment.

On the motion of Mr Serjeant Hullock.

By the Court,

KNAPP.

Lord President.—Remember you are brought here as witnesses, and it is your duty to tell all you know, in answer to the questions that may be put to you. You are now at perfect liberty to do so. No charge can ever be brought against you, as implicated in the matters as to which you will be examined.

Adjourned at half past eleven till three o'clock in the afternoon.

The Court met again at three o'clock the same afternoon.

PRESENT.

The same Commissioners.

The Cryer opened the Court.

The King against John M'Millan and Others.

ORDERED, that Robert Wright, the younger, Walter Bain, and John Nicol, be admitted witnesses for the Crown, and be taken before the Grand Jury to give evidence.

The Grand Jury returned into Court; and, their names being called over, they returned true bills against the following defendants:

N t in custody. { James Anderson, James Rait, George Lennox. } *St Ninian's case.*

Not in custody. { William Crawford, George Gillies, Moses Gilfillan, Andrew Reid, Andrew M'Farlane, James Gunn, Robert Drew, Joseph Gettie. } *Balfron case.*

John M'Millan,
James Burt,
Andrew Burt, jun.
Daniel Turner,
James Aitken, of Falkirk, grocer,
James Aitken, of Falkirk, wright,
Andrew Dawson,
Peter M'Callum.
} *Camelon case.*

Mr Knapp.—My Lord, there are no other bills to put before the Grand Jury.

Lord President.—Gentlemen of the Grand Jury, I sincerely hope that your labours are closed; but, having consulted with my brethren and the counsel for the Crown, I find that it is not possible for the Crown absolutely to discharge you from farther attendance, and that it is absolutely necessary for you to be present on the 6th of July, the time fixed for the arraignments; but, in all probability, that will be matter of form only, and you will not be detained.

Foreman of the Jury.—I beg to state to your Lordship, that I am instructed by the Jury to mention,—and I hope that in this we are not travelling beyond the strict line of our duty,—that, in the course of the very grave examinations and deliberations in which we have been engaged, in hearing evidence on the bills before us, it appears to us, that there is one individual, not included in those bills, who does appear to us, most unquestionably, to be most deeply implicated in the transactions which have given rise to the present commission; and that, in our opinion, if there yet be any mode by which the ends of justice may be further attained, by bringing that individual to trial, he ought to be prosecuted.

Lord President.—The Jury have most undoubtedly discharged their duty in making this statement. Their duty is to inquire into all matters of treason that may be brought before them, and they have stated what came out in the course of that evidence.

Mr Serjeant Hullock.—There can be no objection to inserting the name of the person alluded to in the bill which applies to him, for it must be one of the bills before the Jury. Or, if it be thought more regular and proper, we shall take care that he shall be indicted at the next term of the Court; at the same time, the objection is very palpable to any delay.

[The Judges consulted together for a short time.]

Lord President.—It occurs to us as more regular, for the Jury again to retire, and add the name of the individual to the Bill.—Retire again, Gentlemen, with the bill to which

you have alluded, and you will yourselves add the name of the person to whom you allude.

The Jury then retired with the bill applicable to the Camelon case, and shortly afterwards returned, having added to it the name of John Johnston, who was then put to the bar.

No other bills of indictment having been preferred, the Court stated to the Grand Jury, that their attendance would be required again on Thursday, the 6th July, at 10 o'clock in the forenoon.

The defendant John Anderson being present, and answering to his name as indicted, the Court, at his request, appointed Messrs David Blackie and William Alexander, of Edinburgh, his joint solicitors, or agents; and directed, that Messrs Colin Daun and Robert Haldane, of Stirling, writers, should be permitted to act as assistant agents to the prisoners, during the absence of Messrs Blackie and Alexander.

At the request of the said Anderson, James Moncreiff, and Henry Cockburn, Esquires, were assigned as his counsel; and, in the event of either of those gentlemen not accepting the assignment, or not attending the arraignment or trial, the Court approved of Mungo Brown, Esq. as the counsel in the room of either of the two assigned counsel not accepting such assignment, or not attending.

Copies of the indictment, the list of witnesses, and of the jury, were then delivered to the said John Anderson in open Court.

The defendants, John M'Millan, James Burt, Andrew Burt, the younger, Daniel Turner, James Aitken of Falkirk, grocer, James Aitken of Falkirk, wright, Andrew Dawson, and John Johnston, being present, and severally answering to their names as indicted, the Court, at their request, appointed Messrs David Blackie and William Alexander, their joint solicitors, or agents; and directed, that Messrs Colin Daun, and Robert Haldane, of Stirling, should be permitted to act as assistant agents to the several defendants, during the absence of Messrs Blackie and Alexander.

At the request of the same last mentioned eight defendants, the Court assigned James Moncreiff, and Henry Cock-

burn, Esquires, as their counsel; and, in the event of either of those gentlemen not accepting the assignment, or not attending the arraignment, trial, or trials, the Court approved of Mungo Brown, Esq. as the counsel in the room of either of the two counsel not accepting such assignment, or not attending.

The Court adjourned to Thursday, the 6th July, at ten o'clock in the forenoon.

Thursday, 6th July, 1820.

The Court met, pursuant to adjournment, on the 24th June last.

PRESENT.

The Lord President,
The Lord Justice-Clerk,
The Lord Chief-Baron.

The Cryer opened the Court; and the Clerk having called over the names of the Grand Jury from the pannel, all the members appeared except Alexander Gartshore Stirling, Esq. whose attendance was excused by the Court; a surgeon's certificate of Mr Stirling's ill health having been produced and read.

Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, were then placed at the bar; and, at the request of the prisoners Baird, Clelland, Murchie, and Hardie, the Court assigned Robert Hunter, Esq. as counsel for them in the room of John Peter Grant, Esq.

At the request of the fourteen other defendants, included in the same indictment, the Court assigned Archibald Hope

Cullen, Esq. as their counsel, in the room of Robert Hunter, Esq.

The Clerk then proceeded to arraign the said Thomas M'Culloch, and the seventeen other defendants, and the caption and indictment against them was read:

ABSTRACT OF INDICTMENT.

Counts.	Overt Acts.	
I.		FIRST COUNT.—Compassing and Imagining the Death of the King.
	1.	Conspiring to devise Plans to subvert the Constitution.
	2.	Conspiring to levy War, and to subvert the Constitution.
	3.	For publishing and posting up a Treasonable Address to the Inhabitants of Great Britain and Ireland, to incite the Soldiers of the King and other Subjects to Rebellion.
	4.	For publishing and posting up Printed Addresses to the Inhabitants of Great Britain and Ireland, stating the substance only of such Addresses, with similar intent as in third Overt Act.
	5.	For composing, and printing, and posting up divers Addresses, containing solicitations to the Troops and Subjects of the King to levy War.
	6.	For assembling together, and, whilst so assembled, making speeches to incite the Subjects to Rebellion.
	7.	For purchasing and providing Arms, in order to attack the Soldiers of the King, and to make War against the King.
	8.	For assembling and parading with Arms, and attacking the Houses of divers Subjects, and taking therefrom Arms and Ammunition, with similar intent as in the last Overt Act.
	9	For manufacturing Arms, with similar intent

Counts.	Overt Acts.	
	10.	For training and drilling themselves and others, with similar intent.
	11.	For levying War.
	12.	For endeavouring to seduce the Troops of the King from their allegiance.
	13.	For detaining and imprisoning divers Subjects, with intent, by duress, to compel them to join in levying War.
	14.	For forcing divers Subjects to discharge and turn off their Workmen.
	15.	For striking Work, and compelling and persuading others to do the same.
	16.	For sending Persons to England, to incite the liege Subjects of the King there to acts of Treason.
	17.	For subscribing Money for the purpose of procuring Arms.
	18.	For exhorting and persuading certain of the liege Subjects of the King to procure Arms, to be employed in Rebellion.
	19.	For giving notice of Meetings to be held for the purpose of consulting as to the means of raising War.
II.		SECOND COUNT.—Levying War.
III.		THIRD COUNT.—Compassing and Intending to Depose the King from the style, honour, and kingly name of the Imperial Crown of this Realm. With the same Overt Acts as in First Count.
IV.		FOURTH COUNT.—Compassing to levy War against the King, in order to compel him to change his measures. With the same Overt Acts as in First Count.

Caption.

Stirlingshire—To wit. Be it remembered, that at a Special Session of Oyer and Terminer, of our sovereign Lord the King, of, and for the county of Stirling, holden at the town of Stirling, in the said county, on Friday, the twenty-third day of June, in the first year of the reign of our Sovereign Lord, George the Fourth, by the grace of God, of the united kingdom of Great Britain and Ireland King, Defender of the Faith, before Charles Hope, Esquire, President of the College of Justice, of our said Lord the King, in that part of the united kingdom of Great Britain and Ireland called Scotland; the Right Honourable David Boyle, Esquire, Justice Clerk of our said Lord the King, in the aforesaid part of the said united kingdom; the Right Honourable Sir Samuel Shepherd, Knight, Chief Baron of our said Lord the King, of his Court of Exchequer, in the aforesaid part of the said united kingdom; the Right Honourable William Adam, Esquire, Chief Commissioner of the Jury Court in civil causes, in the aforesaid part of the said united kingdom; and George Fergusson, Esquire, of Hermand; and Adam Gillies, Esquire, of Gillies; two of the Commissioners of our said Lord the King, of Justiciary, in the aforesaid part of the united kingdom; and others, their fellows, Justices, and Commissioners of our said Lord the King, assigned by letters patent of our said Lord the King, under his Great Seal of the united kingdom of Great Britain and Ireland, made by virtue of, and according to, the form of the Statute made in the seventh year of the reign of the Lady Anne, late Queen of Great Britain, &c., entitled, "An Act for improving the Union of the two Kingdoms," to them and others, and to any two or more of them directed (of whom one of them, the aforesaid David Boyle, or the Justice Clerk for the time being; George Fergusson and Adam Gillies, or the Commissioners of Justiciary for the time being, amongst others in the said letters patent named, our said Lord the King willed, should be one,) to inquire, by the oath of good and lawful men of the county of Stirling, of all high treasons, and misprisions of

high treason, within the county aforesaid, as well within liberties, as without, by whomsoever, and in what manner soever, and by whom, when, how, and after what manner done, committed, or perpetrated; and of all other articles and circumstances concerning the premises, and every of them, or any of them, in any manner whatsoever; and the same high treasons, and misprisions of high treason, according to the form of the aforesaid Statute, to hear and determine by oath of The Honourable George Abercromby, Sir Thomas Livingstone, Baronet, Sir James Miles Riddel, Baronet, Peter Spiers, Esquire, William Morehead, Esquire, Ninian Lewis, Esquire, Samuel Cooper, Esquire, James Bruce, Esquire, George Callander, Esquire, Francis Simpson, Esquire, Alexander Gartshore Stirling, Esquire, John Henderson, Doctor of Physic, John Baird, Esquire, John Kincaid, Esquire, William Archibald Cadell, Esquire, Alexander Littlejohn, Esquire, Patrick Muschet, Doctor of Physic, John Murray, Esquire, James Russell, Esquire, Duncan Robertson, Esquire, Joseph Stainton, Esquire, Thomas Campbell Haggart, Esquire, and Alexander Ramsay, Esquire, good and lawful men of the county aforesaid, now here sworn, and charged to inquire for our said Lord the King, for the body of the said county, touching and concerning the premises in the said letters patent mentioned. It is presented in the manner and form that followeth; that is to say,

Indictment for High Treason

First Count.—Stirlingshire—To wit.—The Jurors for our Lord the King, upon their oath, present, that Thomas M'Culloch, late of Glasgow, in the county of Lanark, stocking weaver; Andrew Hardie, late of the same place, weaver; Benjamin Moir, late of the same place, labourer; Allan Murchie, late of the same place, blacksmith; Alexander Latimer, late of the same place, weaver; Alexander Johnston, late of the same place, weaver; Andrew White, late of the same place, bookbinder; David Thomson, late of the same place, weaver; James Wright, late of the same place, tailor; William Clackson, late of the same place,

shoemaker, otherwise called William Clarkson, late of the same place, shoemaker; Thomas Pike, late of the same place, muslin-singer, otherwise called Thomas Pink, late of the same place, muslin-singer; Robert Gray, late of the same place, weaver; James Clelland, late of the same place, smith; Alexander Hart, late of the same place, cabinet-maker: John Baird, late of the parish of Cumbernauld, in the county of Dumbarton, weaver; John Barr, late of the parish of Cumbernauld aforesaid, in the same county of Dumbarton, weaver; William Smith, late of the parish of Cumbernauld aforesaid, in the same county of Dumbarton, weaver; and Thomas M'Farlane, late of the parish of Cumbernauld aforesaid, in the same county of Dumbarton, weaver; being subjects of our said Lord the King, not having the fear of God in their hearts, nor weighing the duty of their allegiance, but being moved and seduced by the instigation of the devil, as false traitors against our said Lord the King, and wholly withdrawing the love, obedience, fidelity, and allegiance, which every true and faithful subject of our said Lord the King should, and of right ought, to bear towards our said Lord the King, on the first day of April, in the first year of the reign of our Sovereign Lord, George the Fourth, by the grace of God, of the united kingdom of Great Britain and Ireland King, Defender of the Faith, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Falkirk, in the county of Stirling, in that part of the united kingdom of Great Britain and Ireland, called Scotland, maliciously and traitorously, amongst themselves, and together with divers other false traitors, whose names are to the said Jurors unknown, did compass and imagine the death of our said Lord the King, and to move and incite insurrection, rebellion, and war against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and to subvert and destroy the legislature rule and government, now duly and happily established within this realm, and to bring and put our said Lord the King to death; and in order to fulfil, perfect, and bring to effect their most evil and wicked treason, and trea-

1st Overt Act.

sonable compassing and imagination aforesaid, they, the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, as such false traitors as aforesaid, on the said first day of April, in the first year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Falkirk aforesaid, in the county of Stirling aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did assemble, meet, conspire, and consult amongst themselves, and together with divers other false traitors, whose names are to the said Jurors unknown, to devise, arrange, and mature plans and means to subvert and destroy the government and constitution of this realm, as by law established; and further to fulfil, perfect, and bring to effect, their most evil and wicked treason, and treasonable compassing and imagination aforesaid, they, the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, as such false traitors as aforesaid, on the said first day of April, in the first year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Falkirk aforesaid, in the county of Stirling aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did assemble, meet, conspire, consult and agree amongst themselves, and together with divers other false traitors, whose names are to the said Jurors unknown, to stir up, raise, make and levy insurrection, rebellion, and war, against our said Lord the King, within this his realm,

2d Overt Act.

with regard to our intentions, we think it indispensibly necessary to declare inviolable all public and private property; and we hereby call upon all Justices of the Peace, and all others to suppress pillage and plunder of every description; and to endeavour to secure those guilty of such offences, that they may receive that punishment which such violation of justice demands. In the present state of affairs, and during the continuation of so momentous a struggle, we earnestly request of all to desist from their labour, from and after this day, the first of April, and attend wholly to the recovery of their rights, and consider it as the duty of every man, not to recommence until he is in the possession of those rights which distinguishes the freeman from the slave; viz. that of giving consent to the laws by which he is to be governed. We, therefore, recommend to the proprietors of public works, and all others to stop the one, and shut up the other, until order is restored, as we will be accountable for no damages which may be sustained, and which, after this public intimation, they can have no claim to. And we hereby give notice to all those who shall be found carrying arms against those who intend to regenerate their country, and restore its inhabitants to their native dignity, we shall consider them as traitors to their country, and enemies to their King, and treat them as such. By order of the committee of organization for forming a provisional government. Glasgow, April 1, 1820. Britons! God, Justice, the wishes of all good men, are with us; join together, and make it one cause, and the nations of the earth shall hail the day when the standard of liberty shall be raised on its native soil." With intent thereby, to solicit and incite the troops, soldiers, and other the liege subjects of our said Lord the King, to aid and assist in making and levying, insurrection, rebellion, and war, against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and in subverting and destroying the government and constitution of this realm as by law established. And the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnson, Andrew White, David Thomson, James Wright,

William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, did then and there, to wit, on the said first day of April, in the first year of the reign aforesaid, and on the said other days and times, at the parish of Falkirk aforesaid, in the county of Stirling aforesaid, in that part of the United Kingdom of Great Britain and Ireland called Scotland, with force and arms, maliciously and traitorously affix, set up, stick, and fasten, and cause to to be affixed, set up, stuck, and fastened to, and upon, divers walls and buildings, in divers public, open, and conspicuous places, with the intent that the same might be seen and read by the liege subjects of our said Lord the King, divers other printed papers, purporting to be addresses to the inhabitants of Great Britain and Ireland, containing therein, in the same manner, and to the same effect as is above stated, and set forth as to the said printed papers in the former part of this overt act, particularly mentioned and set forth, with intent thereby to solicit and incite the troops and soldiers, and other the liege subjects of our said Lord the King, to aid and assist in making and levying insurrection, rebellion, and war, against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and in subverting and destroying the government and constitution of this realm, as by law established: And further, to fulfil, perfect, and bring to effect their most evil and wicked treason, and treasonable compassing and imagination aforesaid, they, the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, as such false traitors as aforesaid, on the first day of April, in the first year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Fal-

4th Overt Act.

kirk aforesaid, in the county of Stirling aforesaid, in that part of the United Kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did publish, and cause and procure to be published, divers other printed papers, purporting to be "Addresses to the Inhabitants of Great Britain and Ireland;" and stating therein, amongst other things, that they, the said false traitors, were at length compelled, from the extremity of their sufferings, and the contempt heaped upon their petitions for redress, to assert their rights at the hazard of their lives, and proclaim to the world the real motives which had reduced them to take up arms for the redress of their common grievances: That their principles were few, and founded on the basis of our constitution, which were purchased with the dearest blood of their ancestors, and which they swore to transmit to posterity unsullied, or perish in the attempt: That equality of rights (not of property) was the object for which they contended, and which they considered the only security for their lives: That "Liberty or Death" was their motto: That they had sworn to return home in triumph, or return no more: And interrogating the soldiers, who the said false traitors therein stated were their countrymen, bound, by the sacred obligation of an oath, to defend their countrymen and their King from enemies whether foreign or domestic, whether they, the said soldiers, would plunge their bayonets into the bosoms of fathers and brothers, and at once sacrifice at the shrine of military despotism, to the unrelenting orders of a cruel faction, those feelings which they held in common with the rest of mankind; and recommending, that the soldiers should at once come forward, and free their country and their King from the power of those who held them too long in thraldom. In the present state of affairs, and during the continuation of so momentous a struggle, they, the said false traitors, earnestly requested of all to desist from their labour from and after the first day of April, and attend wholly to the recovery of their rights; and consider it as the duty of every man not to recommence, until he was in possession of those rights which distinguish the freeman from the slave, namely, that of giving consent to the laws by which he is to be

governed. They, the said false traitors, therefore, recommended to the proprietors of public works, and all others, to stop the one, and shut up the other, until order was restored, as they would be accountable for no damages which might be sustained, and which, after that public intimation, the said proprietors could have no claim to; and they thereby gave notice to all who should be found carrying arms against those who intended to regenerate their country, and restore its inhabitants to their native dignity, that they should consider them as traitors to their country, and enemies to their King, and treat them as such; which said last mentioned printed papers purported to be by order of the Committee of Organization for forming a Provisional Government, with intent thereby to solicit and incite the troops and soldiers, and others, the liege subjects of our said Lord the King, to aid and assist in making and levying insurrection, rebellion, and war, against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and in subverting and destroying the government and constitution of this realm, as by law established. And the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnstone, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, did then and there, to wit, on the said 1st day of April, in the 1st year of the reign aforesaid, and on the said other days and times, at the parish of Falkirk aforesaid, in the county of Stirling aforesaid, in that part of the united kingdom of Great Britain and Ireland, called Scotland, with force and arms, maliciously and traitorously affix, set up, stick, and fasten to and upon divers walls and buildings, in divers public, open, and conspicuous places, with the intent that the same might be seen and read by the liege subjects of our said Lord the King, divers other printed papers, purporting to be addresses to the inhabitants of Great Britain, and Ireland, stating therein, among other

things, in the same manner, and to the same effect, as is above stated as to the said printed papers in the former part of this overt act, particularly mentioned, with intent thereby, to solicit and incite the troops, soldiers, and others, the liege subjects of our said Lord the King, to aid and assist in making and levying insurrection, rebellion, and war against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and in subverting and destroying the government and constitution of this realm, as by law established. And further to fulfil, perfect, and bring to effect their most evil and wicked treason, and treasonable compassing and imagination aforesaid, they, the said Thomas M'-Culloch, Andrew Hardie, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnstone, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, as such false traitors as aforesaid, on the said 1st day of April, in the 1st year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Falkirk aforesaid, in the county of Stirling aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did compose, write, and print, and cause and procure to be composed, written, and printed, with intent to publish the same, and maliciously and traitorously did publish, and cause to be published, divers addresses, proclamations, declarations, and writings, containing therein divers solicitations and incitements to the troops, soldiers, and liege subjects of our said Lord the King, to make and levy, and to aid and assist in making and levying insurrection, rebellion, and war, against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and in subverting and destroying the government and constitution of this realm, as by law established; and did, then and there, maliciously and traitor-

5th Overt Act.

ously affix, set up, stick, and fasten to and upon divers walls and buildings, in divers open, public, and conspicuous places, with the intent that the same might be seen and read by the troops, soldiers, and other the liege subjects of our said Lord the King, divers other addresses, proclamations, declarations, and writings, containing therein divers solicitations and incitements to the troops, soldiers, and other the liege subjects of our said Lord the King, to make and levy, and to aid and assist in making and levying insurrection, rebellion, and war against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and in subverting and destroying the government and constitution of this realm, as by law established. And further, to fulfil, perfect, and bring to effect their most evil and wicked treason, and treasonable compassing and imagination aforesaid, they, the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnstone, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, as such false traitors as aforesaid, together with divers other false traitors, whose names are to the said Jurors unknown, on the 1st day of April, in the 1st year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Falkirk aforesaid, in the county of Stirling aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did assemble themselves together, with divers other liege subjects of our said Lord the King, to a great number, to wit, to the number of fifty and more, whose names are to the said Jurors unknown; and being so assembled together, did, then and there, remain and continue so assembled together, for a long space of time, to wit, for the space of one hour then next following the time of their so assembling; and whilst they remained so assembled, by divers malicious, seditious, inflammatory and treasonable speeches, did, then and there,

6th Overt Act.

endeavour to move, incite, cause, and procure the said last mentioned liege subjects of our said Lord the King, to raise, make, and levy rebellion, insurrection, and war, against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and to subvert and destroy the government and constitution of this realm, as by law established. And further, to fulfil, perfect, and bring to effect, their most evil and wicked treason, and treasonable compassing and imagination aforesaid, they, the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, as such false traitors as aforesaid, on the said 1st day of April, in the 1st year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Falkirk aforesaid, in the county of Stirling aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did purchase, procure, provide, and have, divers large quantities of arms, to wit, guns, muskets, blunderbusses, pistols, swords, bayonets, pikes, pike-heads, and divers large quantities of ammunition, to wit, gun-powder, leaden bullets, slugs, and shot, with intention therewith to arm and array themselves and divers other false traitors, in order to attack, fight with, kill, and destroy the soldiers and troops of our said Lord the King, and other his liege and faithful subjects, and to raise, make, and levy insurrection, rebellion, and war, against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and to subvert and destroy the government and constitution of this realm, as by law established. And further to fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid, they, the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allan Murchie,

7th Overt Act.

8th Overt Act.

Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, as such false traitors as aforesaid, on the said 1st day of April, in the 1st year of the reign aforesaid, and on divers other days and times, as well before as after that day, at the parish of Falkirk aforesaid, in the county of Stirling aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously, together with divers other false traitors, whose names are to the said Jurors unknown, then and there assembled, with divers offensive weapons, to wit, guns, pistols, swords, bayonets, pikes, pitch-forks, sticks and staves, did parade and march with great noise and violence in, through, and along divers public high-ways, towns, villages, and places, and did attack, beset, and enter into the houses and habitations of divers liege subjects of our said Lord the King, and did seize and take divers large quantities of arms and ammunition, to wit, 100 muskets, 100 pistols, 100 swords, 100 bayonets, 100 pikes, 100 guns, and other offensive weapons, 1000 bullets, 1000 slugs, 20 pounds weight of shot, 200 cartridges, and 100 pounds weight of gun-powder, from and out of the same houses, and habitations, with intent, by and with the said last mentioned arms and ammunition, further to arm themselves and other false traitors, in order to attack, fight with, kill, and destroy the soldiers and troops of our said Lord the King, and other his liege and faithful subjects, and to raise, make and levy insurrection, rebellion and war, against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland, called Scotland, and to subvert and destroy the government and constitution of this realm, as by law established. And further to fulfil, perfect, and bring to effect their most evil and wicked treason, and treasonable compassing and imagination aforesaid, they, the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thom- 9th Overt Act.

son, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, as such false traitors as aforesaid, on the 1st day of April, in the first year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Falkirk aforesaid, in the county of Stirling aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did manufacture, and cause, and procure, and order to be manufactured, divers pikes, pike-heads, pike-shafts, and pike-handles, with intent therewith to arm themselves, and other false traitors, for the purpose of attacking and fighting with, killing and destroying the troops and soldiers of our said Lord the King, and other faithful subjects of our said Lord the King, and of making and levying insurrection, rebellion, and war, against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland. And further to fulfil, perfect, and bring to effect their most evil and wicked treason, and treasonable compassing and imagination, aforesaid, they, the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, as such false traitors as aforesaid, on the first day of April, in the first year of the reign aforesaid, and on divers other days, and times, as well before as after that day, with force and arms, at the parish of Falkirk aforesaid, in the county of Stirling aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did train and drill, and cause and procure to be trained and drilled, as well themselves, as divers other false traitors, against our said Lord the King, whose names are to the said Jurors unknown; and maliciously and traitorously did submit

10th Overt Act.

themselves to be trained and drilled, and maliciously and traitorously did appoint divers false traitors, whose names are to the said Jurors unknown, to be officers and commanders over themselves and divers other false traitors, against our said Lord the King, whose names are to the said Jurors unknown; and maliciously and traitorously did submit themselves to be appointed as such officers and commanders as aforesaid, with intent the more effectually to enable themselves, and divers other false traitors, to attack, fight with, kill and destroy the soldiers and troops of our said Lord the King, and other his liege and faithful subjects; and to make, raise, and levy insurrection, rebellion, and war against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and to subvert and destroy the government and constitution of this realm, as by law established. And further, to fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid, they, the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, as such false traitors as aforesaid, on the first day of April, in the first year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Falkirk aforesaid, in the county of Stirling aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, together with divers other false traitors, whose names are to the said Jurors unknown, armed and arrayed in a warlike manner, that is to say, with guns, pistols, swords, bayonets, pikes, pike-heads, and other weapons, maliciously and traitorously did ordain, prepare, levy, and make war, against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland. And further to fulfil, perfect, and bring to effect their most evil and

11th Overt Act.

12th Overt Act.

wicked treason, and treasonable compassing and imagination aforesaid, they, the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, as such false traitors as aforesaid, on the first day of April, in the first year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Falkirk aforesaid, in the county of Stirling aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did endeavour to seduce divers troops and soldiers of our said Lord the King from the duty and allegiance to our said Lord the King. And further, to fulfil, perfect, and bring to effect their most evil and wicked treason, and treasonable compassing and imagination aforesaid, they, the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, as such false traitors as aforesaid, on the first day of April, in the first year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Falkirk aforesaid, in the county of Stirling aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did detain and imprison divers liege subjects of our said Lord the King, with intent then and there, by duress of imprisonment, to compel the same liege subjects to join and accompany them, the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike,

13th Overt Act.

otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, in their said wicked treason, and treasonable compassing and imagination aforesaid. And further, to fulfil, perfect, and bring to effect their most evil and wicked treason, and treasonable compassing and imagination aforesaid, they, the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, as such false traitors as aforesaid, on the first day of April, in the first year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Falkirk aforesaid, in the county of Stirling aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did force, compel, oblige, induce, and persuade, and cause to be forced, compelled, obliged, induced, and persuaded, divers other liege subjects of our said Lord the King, who then and there had and employed in their service divers great numbers of other liege subjects of our said Lord the King, as working persons and labourers, in various occupations, in which such last mentioned working persons and labourers worked for the maintenance and support of themselves and their families, to discharge and turn off, out of work and employment, the said working persons and labourers. And further, to fulfil, perfect, and bring to effect their most evil and wicked treason, and treasonable compassing and imagination aforesaid, they, the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, as such false traitors as aforesaid, on the first day of April,

14th Overt Act.

15th Overt Act.

in the first year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Falkirk aforesaid, in the county of Stirling aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did strike, abandon, and give up their work and labour, in which they respectively worked and laboured for the maintenance and support of themselves and their families; and did desert, cease, and abstain from doing any work or labour, for the maintenance or support of themselves or their families; and maliciously and traitorously did force, compel, oblige, induce, and persuade, and cause and procure to be forced, compelled, obliged, induced, and persuaded, divers other liege subjects of our said the Lord the King, being persons who worked and laboured for the maintenance and support of themselves and their families, to strike, abandon, and give up their work and labour, and to desist, cease, and abstain from doing any work or labour for the maintenance and support of themselves or their families; and did then and there, as such false traitors as aforesaid, maliciously and traitorously hinder, obstruct, and prevent divers works and manufactories of divers liege subjects of our said Lord the King from being proceeded in, and carried on. And further, to fulfil, perfect, and bring to effect, their most evil and wicked treason, and treasonable compassing and imagination aforesaid, they, the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, as such false traitors as aforesaid, together with divers other false traitors, whose names are to the said Jurors unknown, on the first day of April, in the first year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Falkirk aforesaid in the county of Stirling aforesaid, in that part of the united kingdom of Great Britain and Ireland, called Scotland, malicious-

16th Overt Act.

ly and traitorously did send and convey, and cause and procure to go, and to be sent and conveyed from divers places, in that part of the united kingdom of Great Britain and Ireland called Scotland, to divers towns, villages, and other places, as well in that part of the said united kingdom called Scotland, as in that part of the said united kingdom called England, divers other false traitors, whose names are to the said Jurors unknown, in order that the said last mentioned false traitors might procure and incite liege subjects of our said Lord the King, in the said towns, villages, and places, in the same parts of the said united kingdom, to join with, and aid, and assist them, the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, in their evil and wicked treason, and treasonable compassing and imagination aforesaid. And further, to fulfil, perfect, and bring to effect, their most evil and wicked treason, and treasonable compassing and imagination aforesaid, they, the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, as such false traitors as aforesaid, on the first day of April, in the first year of the reign aforesaid, and on divers other days and times, as well before that day as after, with force and arms, at the Parish of Falkirk aforesaid, in the county of Stirling aforesaid, in that part of the united kingdom of Great Britain called Scotland, maliciously and traitorously did subscribe, contribute, pay, and cause and procure to be subscribed, contributed, and paid, divers sums of money, as well for the purpose of printing, publishing, procuring, and circulating divers seditious, inflammatory, and treasonable proclamations, addresses, and other writings and print-

17th Overt Act.

ings, with intent to encourage and incite the troops and liege subjects of our said Lord the King to insurrection and rebellion against our said Lord the King, as of purchasing and procuring with the said sums of money, arms and ammunition, to wit, guns, muskets, bayonets, pikes, pike-heads, pike-shafts, gunpowder, leaden bullets, slugs, and shot, with intent to arm themselves and divers other false traitors, with the said last mentioned arms and ammunition, in order to attack, fight with, kill, and destroy the soldiers and troops of our said Lord the King, and other his liege and faithful subjects, and to raise, make, and levy, insurrection, rebellion, and war against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and to subvert and destroy the government and constitution of this realm, as by law established. And further, to fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid, they, the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, as such false traitors as aforesaid, on the 1st day of April, in the first year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Falkirk aforesaid, in the county of Stirling aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did give and cause to be given notice to divers persons of meetings to be held for the purpose of consulting upon the means of raising war and rebellion against our said Lord the King within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland; and did summon, request, and require, and cause to be summoned, requested, and required, divers persons to attend at the said several meetings, for the purpose last aforesaid. And further, to fulfil, per-

18th Overt Act.

19th Overt Act.

fect, and bring to effect their most evil and wicked treason, and treasonable compassing and imagination aforesaid, they, the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, as such false traitors as aforesaid, on the first day of April, in the first year of the reign foresaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Falkirk aforesaid, in the county of Stirling aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did exhort, encourage, persuade, and incite, as well divers liege subjects of our said Lord the King, whose names are to the said Jurors unknown, as divers other false traitors, whose names are also to the said Jurors unknown, to procure, provide, and possess themselves of, and with arms, to be employed by such last-mentioned subjects and traitors, in making insurrection, rebellion, and war, against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and subverting and destroying the government and constitution of this realm, as by law established, in contempt of our said Lord the King and his laws, to the evil example of all others, contrary to the duty of the allegiance of them, the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, against the form of statute in such case made and provided, and against the peace of our said Lord the King, his crown and dignity; and the Jurors aforesaid, upon their oath aforesaid, do further present, that the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Al- II. Count

lan Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, being subjects of our said Lord the King, and not having the fear of God in their hearts, nor weighing the duty of their allegiance, but being moved and seduced by the instigation of the devil, as false traitors against our said Lord the King, and wholly withdrawing the love, obedience, fidelity, and allegiance, which every true and faithful subject of our said Lord the King should, and of right ought to have, towards our said Lord the King, on the fifth day of April, in the first year of the reign aforesaid, with force and arms, at the parish of Falkirk aforesaid, in the county of Stirling aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, together with divers other false traitors, whose names are to the said Jurors unknown, arrayed and armed in a warlike manner, that is to say, with guns, muskets, blunderbusses, pistols, swords, bayonets, pikes, pike-heads, pitch-forks, clubs, and other weapons, being then, and unlawfully, maliciously, and traitorously assembled together against our said Lord the King, wickedly, maliciously, and traitorously, did levy and make war against our said Lord the King, within this his realm, to wit, within that part of the United Kingdom of Great Britain and Ireland called Scotland; and being so then and there assembled together, arrayed, and armed against our said Lord the King, as aforesaid, did then and there, to wit, on the said fifth day of April, in the first year of the reign aforesaid, with force and arms, at the parish of Falkirk aforesaid, in the county of Stirling aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously parade and march in a hostile manner, in and through divers towns, villages, places, and public highways; and did then and there, to wit, on the said fifth day of April, in the first year of the reign aforesaid, with force and arms, at the parish of Falkirk aforesaid, in the county of Stirling

aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously array and set themselves in warlike and military order, battle, and array, against divers troops, soldiers, and faithful subjects of our said Lord the King, then and there being; and did then and there, to wit, on the said fifth day of April, in the first year of the reign aforesaid, with force and arms, at the parish of Falkirk aforesaid, in the county of Stirling aforesaid, in that part of the United Kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously, with guns and pistols, and other fire-arms, then and there loaded with gunpowder and leaden bullets, and with swords, bayonets, pikes, pike-heads, pitch-forks, and other offensive weapons, shoot and fire at, charge, thrust, strike at, and wound the said troops, soldiers, and faithful subjects of our said Lord the King, so then and there being as aforesaid; and did then and there maliciously and traitorously attempt and endeavour, by force and violence, to subvert and destroy the government and constitution of this realm, as by law established, in contempt of our said Lord the King, and his laws, to the evil example of all others, contrary to the duty of the allegiance of them, the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allen Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his crown and dignity.

Third Count.—And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allen Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alex-

ander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, being subjects of our said Lord the King, not having the fear of God in their hearts, nor weighing the duty of their allegiance, but being moved and seduced by the instigation of the devil, as false traitors against our said Lord the King, and wholly withdrawing the love, obedience, fidelity, and allegiance, which every true and faithful subject of our said Lord the King should, and of right ought to bear, towards our said Lord the King, on the first day of April, in the first year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Falkirk aforesaid, in the county of Stirling aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously amongst themselves, and together with divers other false traitors, whose names are to the said Jurors unknown, did compass, imagine, invent, devise, and intend to deprive and depose our said Lord the King of and from the style, honour, and kingly name of the Imperial Crown of this realm.

(The indictment then states the same nineteen overt acts charged in the first count.)

Fourth Count.—And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said Thomas M'Culloch, Andrew Hardie, Benjamin Moir, Allen Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, otherwise called William Clarkson, Thomas Pike, otherwise called Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, being subjects of our said Lord the King, and not having the fear of God in their hearts, nor weighing the duty of their allegiance, but being moved and seduced by the instigation of the devil, as false traitors against our said Lord the King, and wholly withdrawing the love, obedience, fidelity, and allegiance, which every true and faithful subject of our said Lord the King should, and of right ought to have, towards our said Lord the King, on the first day of April, in the first year of the

reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Falkirk aforesaid, in the county of Stirling aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously, together with divers other false traitors, whose names are to the said Jurors unknown, did compass, imagine, invent, devise, and intend to levy war against our said Lord the King, within this realm, in order, by force and constraint, to compel him to change his measures and counsels.

(The indictment then states the same nineteen overt acts charged in the first and third counts.)

Mr Knapp.—Thomas M'Culloch, are you guilty, or not guilty?

Mr Cullen.—My Lord President, as counsel for the unfortunate men now at the bar, I am anxious, with the permission of the Court, to make a very few observations upon one part of this indictment, before the prisoners are called upon to plead. And, I trust the Court will give me all the indulgence, which, in truth, I require so much, while I venture to offer myself to their notice. I need not say that I feel placed in a very delicate situation. For the first time, I find myself preparing to speak before a Court, the nature and proceedings of which are indeed novel in this part of the island. With the law that regulates cases which come before it, I am bound, as every Scotch lawyer is bound, to make himself acquainted, since the English law of Treason, by an Act of Queen Anne, subsequent to the Union, has been made the Law of Treason in Scotland. This I have, therefore, done to the best of my abilities. But with the forms of procedure, the rules of evidence, and many other matters, which are regulated by the law of England, it cannot be expected that I should know almost any thing. Nevertheless, having the interest of my clients deeply at heart, and anxious to discharge my duty faithfully towards them, and towards the Court who have appointed me to act for these men, I shall, without further delay, proceed to offer such observations as have occurred to me, applicable to the present occasion.

It is now that the prisoners are to be arraigned; in other words, are to plead to the Indictment. If any matters occur to them which can be offered in the shape of pleas, besides the general plea of Not Guilty, it is now that they are called upon to state these to the Court. The pleas which it is proper for a prisoner to offer at his arraignment, are of different kinds. Such as, 1. Pleas to the Jurisdiction. 2. Demurrers. 3. Dilatory Pleas; which may either be declinatory of the trial, or *in abatement*. 4. Pleas in Bar; or, 5. Pleas to the Matter; *i. e.* A general plea of Not Guilty, or a special plea.

I have no plea to offer for the prisoners to the jurisdiction of this Court; neither have I any plea in bar. I have no special plea, nor any plea declinatory of the trial. In short, I am either to offer a general plea of Not Guilty, or I am to plead *in abatement*. The latter is the course which I at present intend to adopt, and my plea is founded upon what humbly appears to me to be an error in laying the *place* of this indictment. It appears to me, with great submission, to be laid too generally—the description does not seem to be sufficiently definite.

This is an objection to the indictment, which, if well founded, would, in ordinary cases, induce the Court to quash it at the arraignment; but in trials for High Treason, it may be otherwise. In these, I am aware that the Court are not in the practice to quash an indictment, but on very important grounds. All objections here are in general reserved to be stated in arrest of judgment. Accordingly, in the Statute seventh William III. c. 3, which regulates the proceedings in trials for High Treason, mention is particularly made of those matters which must be pleaded in abatement, and at no other time, leaving the inference that all other pleas should be pleaded in arrest of judgment. In this statute it is laid down, that "no Indictment for High Treason shall be quashed for mis-writing, mis-spelling, false or improper Latin, unless such exception be made before evidence led." And, as to quashing indictments generally, it is laid down by Hawkins, book II. c. 25. § 148, "That, by the Common Law, the Court may, in discretion, quash any indictment for any such insufficiency, either in the caption or body of it, as will make any judgment, whatsoever given, upon any part of it,

against the defender, erroneous; yet it seems that judges are in no case bound *ex debito justitiæ*, to quash an indictment, but may oblige the defendant either to plead or to demur to it; and this they generally do where it is for a crime of an enormous or public nature."

The present trial is for a crime undoubtedly of an enormous and public nature, and the Court may oblige my clients either to plead or to demur it. Since the objection to the indictment now offered to be pleaded in abatement, does not fall under any of those comprehended in the Statute of William, the Court may refuse to give effect to it, and may reserve it to be stated in arrest of judgment. But, in truth, whether effect is to be given to it or not, it is my duty to state it, at least at present, because, if not pleaded now in point of form, I may be barred from pleading it afterwards in arrest of judgment. Therefore, if your Lordship desires that I should enter fully into the objection, I am prepared, I hope, to do so.

The Lord President.—We cannot judge of any thing, till we hear what the objection is; and the Court are most willing to hear your objection now; and I beg it may be stated.

Mr Cullen.—Then, my Lord, as I formerly hinted, my objection is to the manner in which the *place* is laid in this indictment. The crime charged in this indictment, is alleged to have been committed "*at the parish of Falkirk, in the county of Stirling.*" Now, the prisoner at the bar, who has been called upon to plead to this indictment, craves to be allowed to plead in abatement, that this is too indefinite a description of the place; that the "vill," or "small town," in which, or near which, the crime was committed, ought to be specifically laid down. In other words, that, if a parish consist of several "*vills*," the particular vill, in point of law, ought to be distinguished, otherwise the parish, as generally laid, will be presumed to consist of but one vill, until the contrary be proved. This I hope immediately to shew your Lordship, is laid down as the law by those celebrated lawyers, who wrote formerly on the subject, and by the more modern and recent writers, who have lately published upon the practice as it now is.

A "*vill*," I may observe, is described in Tomlin's Law Dictionary, a book of late authority, to be "the out-part of a parish, consisting of a few houses, as it were separated from it." "Villa est ex pluribus mansionibus vicinata et collata ex pluribus vicinis." He further says, "The word town or vill is now, by the alteration of times and language, become a general term, comprehending under it the several species of boroughs and common towns."

Such being the meaning of the word vill—that it may be now synonimous with a town; the fact which I would offer to prove is, that the parish from which the *venue* is taken in this indictment, consists of more than one vill—that it, in truth, consists of seven different towns, some of them of considerable extent; and this being the fact, I humbly maintain, in point of law, that it ought to have been stated in this indictment, in what particular town, or near what particular town, the crime charged was committed.

I shall now direct the attention of the Court to the authorities by which I am supported. And first, Lord Hale, vol. II. c. 25, p. 180, says generally, that, "regularly the vill, or hamlet and county, must be expressed in the indictment;" and immediately he qualifies this as to certain crimes, by adding, that "in some crimes no vill need be named, as upon an indictment of barretry," for reasons which he there specifies. On this subject, however, Lord Hale is not so full as an author who wrote subsequently, and who is also one of the first authorities in the law of England—I allude to *Hawkins*. That learned writer, at book II. c. 23. § 92, expressly says: "Also, if a fact done in a vill, within a parish, which contains divers vills, be in the count, in an appeal alleged generally in the parish, or a fact done in a city, which contains divers parishes, be in the count, in an appeal, alleged generally in the city, it seems that the defendant may plead such matter in abatement, for otherwise he could take no advantage of the insufficiency of the allegation, because the place named, as it stands in the record, must, till the contrary be shewn, be intended to contain no more than one town or parish."

This passage is express on the point, and, moreover, here it may be observed, that Hawkins speaks of "town" as synonimous to "vill," at the conclusion of the passage.

It is true this occurs under the head of appeals; but the very same doctrine applies, in this particular, to them as to indictments, which appears from a passage in a subsequent part of the work, by the same author, relating to the subject of indictments, at book II. c. 25. § 85, where, treating of the manner in which the place ought to be laid, in an indictment, as to vills and parishes, he refers the reader, for these matters, to the very passage formerly quoted, "for a fuller consideration of them."

The very same argument may be used in the case of outlawry, before the exigent has been awarded, if the same error occurred in the addition to a prisoner; and this under the Statute of Additions. See Hawkins, book II. c. 28. § 104; also book II. c. 25. § 72. But I am unwilling to detain your Lordships by entering upon this argument of analogy, particularly since the point is so clearly laid down as applicable to the *place* of the indictment, which is the only matter now before the Court.

The next authority to which I would request the attention of your Lordships, is a case in Salkeld's Reports, vol. I. p. 59. It is the case of "Wilson, *versus* Laws." Tr. Term, sixth Williams and Mary, in which, after several exceptions taken, it was ruled by the Court, among various other matters, "4thly, That the fact is well alleged in a parish, though the statute of Gloucester requires the vill should be set forth, for the parish shall be intended a vill; and though there may be more than one vill in a parish, that shall never be supposed: And, therefore, if the case happens to be so, it must come of the other side to shew it." This, with great submission, appears to me to be directly in point. The place of this indictment is laid in a parish, which by law is sufficient, unless the defendant can shew that the parish consists of more vills, or towns, than one; in which case, the prosecutor is bound to specify more particularly in what part of the parish the crime alleged was committed.

Besides, there is another set of individuals about to be arraigned at this bar immediately, who are charged with having committed the same crime of high-treason *within the same parish*, without any greater specification as to time, place, or circumstances, than is given to those who now stand before your Lordships. How are my clients now at the bar to distinguish betwixt their case and that of the men who are to follow them in the order of arraignment?

In the law of Scotland, such a loose, vague, and indefinite charge would not be suffered to stand for one moment before a criminal court; but the practice may be different in England. I have endeavoured to point out what the law appears to be from the authorities I have quoted; and that law seems to warrant no such indefinite charge as appears on the face of the present indictment. From the case also which I have quoted, the subsequent practice seems to have been in conformity with the law, as laid down by Hale and Hawkins.

In order to ascertain the practice of late years in England, I have looked into the more recent writers on the subject, and I find them all directly supporting me in what I have endeavoured to maintain. Mr Chitty, in his "Practical Treatise on the Criminal Law," lays it down expressly as recent practice, that "wherever the place is generally alleged, the law will intend it to be a vill, unless the contrary appears on the record; and, therefore, where a parish is mentioned which contains several vills, this will never be supposed, but must be pleaded in abatement."—Vol. I. p. 197. And he cites many authorities, which, however, it is needless to enlarge upon; as Co. Lit. 125, and 6 Co. 14, b; 1 Burr. 337.

Another late writer, whose authority as a living author is of no small weight, I understand, with English lawyers, I mean *Mr Starkie*, lays down the same rule of practice in his "Treatise on Criminal Pleading." At p. 59, vol. I. of that book, he states, that "whenever the place is generally alleged, the law will intend it to be a vill, unless the contrary appear in the record. If, therefore, a fact done in a vill within a parish which contains several vills, be alleged to have been done at the parish generally, it will be intended

that the parish contains but one vill; and therefore, to take advantage of the defect, the defendant must plead in abatement." This writer also, in treating of the Statute of Additions, lays down the same doctrine as applicable to the addition of a prisoner in a case of outlawry before the exigent is awarded, from which an argument in analogy is offered, but which I abstain from enlarging upon, as I fear I have already detained the Court unnecessarily long.

I therefore shall conclude by stating, that I am in a situation to prove, that the parish of Falkirk, which is laid generally as the *place* at which the crime charged in the indictment was committed, consists of a variety of vills; or, as Tomlin says, they may now, from the alteration of times and language, be denominated "common towns." It is a parish of very unusual extent, and there are no less than seven different towns in it, of one description or another. These are Falkirk, Grahamstone, Beansford, Lawrencetown, Camelon, Carronshore, and Grangemouth, all in the parish of Falkirk. Now, I submit, that this indictment ought to have specified to which of these different towns the crime charged had a reference. It ought to have pointed out more specifically in what part of the parish the crime was committed, in what vill, or near what vill; and not having done so, I maintain that, in point of law and practice, (though of the latter I speak with peculiar diffidence,) this indictment ought to be quashed.

I cannot sit down without apologizing to the Court for having detained them so long. But I felt that I had a duty to perform towards these unfortunate men, paramount to any feelings of delicacy, and I have discharged it as well as I was able. If there be any thing in the objection I have enlarged upon, your Lordships will not fail to give effect to it; if, on the contrary, there be nothing, you will at least do me the justice to be assured, that I have stated this objection from the best of motives, and that nothing but the interest of the prisoners at the bar, which I feel deeply, could have induced me to encroach so long upon your time and patience.

Lord President.—The objection has been extremely well stated, Mr Cullen, and you have done your duty.

Mr Serjeant Hullock.—In rising to answer what has been said, I shall not occupy much time; and I may venture to assert, without fear of contradiction, that this is the first time such an objection was ever made.

There was no occasion for the learned gentleman's apology, for his industry and learning have enabled him to collect all that could be said on the subject.

But, I say to your Lordships, that if the place is wrong laid in this indictment, there has not been one indictment since I belonged to the profession—(and I speak in the hearing of another person, one of your Lordships, whose knowledge on the subject is unquestionable)—there has not been an indictment heard and tried, which has not been laid as in this indictment, and no such objection was ever brought forward except in one instance, where it was repelled.

The reasons upon which this objection has been founded, has long ceased to operate in the law of England. Formerly it was necessary to summon the array from the "vill," or vicinage of the place where the crime charged was committed, and it was a challenge to the array, if not so summoned; and the law continued so, in point of fact, for a long period, in criminal and civil proceedings. But inasmuch as it is now notorious to every one that the juries are not summoned from the "vill," or vicinage, but are not even summoned from the parish in which the "vill" is situated, the rule, in point of fact, has so far ceased, that now it is held in England that a venue laid in a county is sufficient.

The reason having ceased, the law ought to cease with it.

What is the objection here? It is founded on two authorities. Hale and Hawkins are great authorities,—men of high rank, talents, and legal knowledge. But the learned Counsel will excuse me, if I beg leave to say that the statements of Mr Chitty, or of Mr Starkie, are not to be considered as authorities. I would as soon take the dictum of the learned Counsel himself, as that of any living authority. They both rest on an authority, but they do not go to any legal principle; and therefore, if the authority is well founded, or former practice has been deviated from, they just leave the matter where they took it up; they do

nothing but state what they find in the old books upon the subject.

The learned Counsel misconceived a case which he cited: That was the case of an appeal; and it will be found, on a minute investigation into the subject, that the decision was not such as was represented. And in appeals, there is infinitely greater strictness required than in an indictment. The case referred to was no decision of the point in question, but merely, that if it was an objection, it was to be stated in abatement. (Here Mr Serjeant Hullock read the report in Salkeld at length.)

The objection, if founded at all, is bottomed on, and must be sustained by, the quotations from Hale and Hawkins.

In point of practice, there never was an indictment drawn in which it was not alleged in this way.

Are we bound to prove the overt act in the parish where it is laid? By law, if we prove it within the county, it is enough. Then, upon what principle of law, or of common sense, (upon which the law is founded) can it be contended that the place in this indictment should have been more specifically described?

There is no such thing as a township in Scotland. A vill in England, is not three or four houses. It means a place where there is a constable. The whole basis, therefore, of the argument fails. I speak in the hearing of those who know the law well. A vill, I say, is not merely five or six houses.

Lord President.—Suppose the facts were stated to have happened in the open country?

Mr Hullock.—True;—and there is no such thing as a vill in Scotland. In England, vill and township are synonimous—of the same legal extent and meaning. There must be a constable; and where you point out a constable, there is a distinct vill.

The Lord Chief Baron.—I doubt, Mr Cullen, whether there be any thing in Scotland analogous to a "vill" in England.

Mr Cullen.—Your Lordship has drawn my attention to Mr Hullock's argument of analogy. If a vill, or town-

ship, in order to be entitled to that importance, requires a constable, there are various such townships in the parish of Falkirk. We are in a situation to prove, that in the parish of Falkirk there are different towns, some of which have been erected into baronies; and, in analogy, is not a baron-baillie to be considered a sufficient officer? And will not a barony then be considered a sufficient "vill" in the eye of the law of England?

Mr Serjeant Hullock.—The question, I apprehend, is,—Is this an objection in the law of England, upon which your judgment can proceed? I aver, it is no such thing; because the parish is a sufficient *venue*. Can the contrary be shewn here? It could not be shewn by the English law. You might say, here are twenty or thirty hamlets, but that would not answer.

The learned Counsel knows, that this plea is to be put on parchment, and to be sworn to. In what way could he shew there was any particular vill? Would he state there was a barony? Would that do? The law, with regard to vills, has no analogy to the Scotch law as to baron-baillies or baronies.

In England, every indictment for High Treason which has been tried, down to the moment I address you, has been laid in this way. And when I consider the learning and the talent which have been employed on those several occasions, when every thing was done that both learning and talent could do for the persons under trial, I am bound to suppose, in candour to the gentlemen engaged, that this objection did not escape them, but that they thought there was nothing in it, and passed it over.

I may here notice the case of Thistlewood, in 1817, where the *venue* was laid in the parish of *Marie-la-bonne*, and not in any particular vill. If we are to talk of vills, there are scores of them there. This very objection was taken, but the Judge said, he never heard of it before.

I have also to speak to the practice of another Judge—Mr Justice Holroyd. He overruled the plea; and that plea did state, that in the parish there were various townships with constables.

Lord Chief Baron.—Was the matter of abatement on record?

Mr Serjeant Hullock.—The objection was quashed, and the Judge would not receive it.

I submit, therefore, there is no law that requires that to be done now. The law of England cannot be better collected than by practice and usage. To mention the practice on this point is enough. And that is the fact which I have stated as to the practice.

The Court of King's Bench has decided in civil actions, where there is as much strictness as in criminal cases, that mention of the county is sufficient. It is very much the fashion of young pleaders, in civil actions, to state the matter as having happened "in the county aforesaid," without even laying the parish. And the reason given, is, that inasmuch as now the juries must come from the body of the county, the reason for a different practice, such as it was, has ceased to exist; and it is idle, and not wise, to found on what is not supported by reason.

No case has been stated on the other side, in which this objection has ever been allowed to prevail. Therefore, and as the reason has ceased to exist which was the basis of the law, the superstructure ought to fall.

The present indictment is consistent with the practice observed in all similar cases. It is the uniform course of practice and experience in England upon which this indictment is bottomed. Without adverting, therefore, to what may be the law of Scotland, I hope it will be apparent that this objection must be overruled.

Mr Cullen.—I do not rise to reply to the learned disquisition which we have just had from Mr Serjeant Hullock, for, by this time, your Lordships' minds must have been made up on the import of the present discussion.

I may, however, make one observation upon an illustration of the practice which was dwelt upon by Mr Hullock, and in which, with much deference, he appears to have mistaken the import of the law as laid down by Hawkins. The learned Serjeant instanced the case of Thistlewood, in 1817, and observed, that there the *venue* was laid in the

parish of Marie-la-Bonne, and not in the vill of that parish, though it might be proved to consist of several vills. Now, here, Hawkins lays down expressly, that such is quite correct in point of law, and I did not argue for the opposite. In the passage I quoted before from Hawkins, Book II. c. 23, § 92, he expressly lays down, that if the place be laid in a city, the parish in that city must be specified, and no more. It is only when laid in a country-parish, in which are various vills or small towns, that the vill must be specifically laid,

I will only add, that the writers whom I quoted towards the close of my former observations, are the most recent authorities that have published on the present practice before the Courts of England. If they declare expressly that the practice now, is in conformity with the law laid down, on the subject of the present argument by Lord Hale and by Hawkins, and if your Lordships shall consider this erroneous in point of practice, then I have undoubtedly been deceived, as the learned Serjeant remarked, And it is to be regretted, that an error of this nature should have crept into authorities of such recent date. Of the late practice in England upon this matter, it cannot be supposed that I should be informed, but from the books which profess to publish this to the country.

Lord Chief Baron.—Do you withdraw the objection? If you were to plead in abatement, you must plead that the parish has different vills in it; then that what you call a vill is constituted according to what the law of England would find to be a vill. But I very much doubt, whether in Scotland you could find any district so situated as a vill in England, at the time that the law was supposed to exist. And, if you made out the fact, my notion is, that, at the present day, it would not be a good plea in abatement.

Mr Chitty I do not undervalue. He has published much useful practical information. But his materials were collected during the course of his long legal life; and he puts down a good deal collected from ancient authors, and leaves it as the law of the present day.

Hale says, that when the objection is stated, it must be

as a plea in abatement; but that does not say it would be a good plea.

But you have done your duty in stating whatever objection occurred to you, either in point of form or substance.

(The objection was withdrawn.)

Mr Knapp, (clerk of arraigns.)—Thomas M'Culloch, are you guilty or not guilty?

Thomas M'Culloch.—Not Guilty.

Mr Knapp.—How will you be tried?

Thomas M'Culloch.—By God and my country.

Mr Knapp.—God send you a good deliverance.

Mr Knapp went over all the other prisoners (except the defendants in the Camelon Case) in the same way.

The Lord President.—Thomas M'Culloch, and you other prisoners, I have to inform you that your trials will come on upon the 13th of this month, and you will be prepared accordingly.

THE

TRIAL

OF

ANDREW HARDIE.

Stirling, Thursday 13*th July*, 1820.

PRESENT.

The Right Honourable CHARLES HOPE, Lord President.
The Right Honourable DAVID BOYLE, Lord Justice Clerk.
The Right Honourable Sir SAMUEL SHEPHERD, Lord Chief Baron.
The Right Honourable WILLIAM ADAM, Lord Chief Commissioner.
The Honourable ADAM GILLIES, Lord Gillies.

Counsel for the Crown.

The LORD ADVOCATE.
The SOLICITOR GENERAL.
Mr SERJEANT HULLOCK.
Mr DRUMMOND.
Mr MACONOCHIE.
Mr HOPE.

Agent.

JAMES ARNOTT, W. S.

Counsel for the Prisoner.

Mr JEFFREY.
Mr CULLEN.

Agents.

Messrs BLACKIE and ALEXANDER, W. S.

The Court being opened, Andrew Hardie was set to the bar; and Thomas M'Culloch, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, J. S. Wright, William Clarkson, Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Baird, John Barr, William Smith, and Thomas M'Farlane, were placed behind him.

Mr Jeffrey.—My Lords, I am not quite certain, in the novel situation in which I now feel myself placed, whether, what I am going to state, is about to be stated in the proper time and place; but, my Lords, being advised that there is an objection competent to the prisoners at the bar, against the whole array returned for their trial, I am ready, with the permission of the Court, to state the grounds of this objection; and, it occurs to me, that if it is well founded, it will be a material saving of the time of the Court, that the grounds of it should be gone through now, even before the ceremony of calling the names of the persons, returned to attend as Jurors, is gone over.

My Lords, I do not know whether I ought to intimate or insinuate to your Lordships, that there is a matter in which I conceive my unfortunate clients to have a material, though a different interest, which it does appear to me to be desirable to be disposed of, even anterior to this objection. My Lord, I observe, in the array of the learned Counsel for the prosecution——

Lord President.—So do I too—do you mean to object to that?

Mr Jeffrey.—Yes, my Lord; not to the whole. One of my objections is a challenge to the whole array,—though not of the counsel. But I think it desirable, before we enter into this judicial combat, that we should ascertain the real combatants; and, my Lord, it does appear to me to be material to the interests of the unfortunate persons at the bar, that we should ascertain, before entering into this perilous combat, whether one of the gentlemen is legally entitled to add

the great weight of his authority and learning to the very formidable phalanx which we have at any rate to encounter.

My Lords, I observe in the array of the Counsel for the prosecution, an individual known to me, and generally known by reputation, but unknown as a practitioner in any Scottish court. Now, my Lords, I am sure it is unnecessary for me to say, that in objecting to that person's being allowed to add the weight of his learning and authority to this prosecution, I am the farthest in the world from intending any discourtesy or disrespect to him as an individual; and, certainly, my Lords, if I were to consult only my own feelings and inclinations, nothing could be so gratifying and advantageous to me, as to have an opportunity of taking a lesson from the great talent, learning, and experience, that we all understand to belong to that individual; but standing here as advocate for the prisoners at the bar, all personal considerations must give way to what I sincerely feel to be for their interest; and your Lordships will require no other statement from me now, as to the motives by which I am led to trouble the Court with the few observations I shall submit.

My Lords, it is too plain to require argument, that a person, of whatever rank or consideration in the profession to which I have the honour of belonging, but who is not qualified or received as a person entitled to practise in a Scotch Court, can in general have no right whatever to appear in any court of that description; and, therefore, my Lords, I am confident, that the only ground upon which the services of this valuable practitioner will be claimed, will be either in respect to the nature of the Law by which we are to decide, or to argue in this case; or perhaps more peculiarly with regard to the constitution of the Court, in which we are now assembled.

My Lords, it is certainly true, as I but too intimately feel, that the law, according to which this trial is to be had, is a law that has been, for a course of time, though not very long, drawn from another country; and that it did not anciently form a part of that system of jurisprudence, with which

alone persons in my situation are generally bound to be acquainted; and up to this day it does, as to the forms of procedure, form an eminent and distinct exception from those forms, in the practice of which we pass our lives exclusively. But, my Lords, I need not state to your Lordships, that, though by virtue of a statute, certainly upon the whole most beneficial and salutary to this part of the empire, the law of Treason, and the forms of proceeding, have been assimilated to those of England, it is not the less true, that the only effect produced by this change is, that the law of treason, as so altered by statutory authority, *has become part of the law of Scotland*; and no other effect has been produced upon our system by the statute of Queen Anne, containing, as it does, a general enactment, that in time to come, all that is treason in England shall be treason in Scotland, and that the courts trying it shall try it in the manner in which it had been tried in England, than if it had engrossed the whole provisions of the law of England, and an abstract or detail of the whole practice. In short, all that is done is, by a general reference, rather than a particular enumeration, to make the law of Scotland with regard to the definition and trial of one offence identical, at most points, if not altogether, with the law of another country, which was supposed to be better regulated at the time. This however plainly would not entitle persons, who have no *locus standi* in a Scotch Court, to appear there; because your Lordships are aware the same thing might be said of every proceeding in every Scotch Court, of civil or criminal jurisdiction, where the matter was regulated by a British statute common to both parts of the empire: For, so far as such British statutes are connected with individual rights or offences, by terms embracing both ends of the island, the same identity of law exists, that has existed as to treasons since the statute of Queen Anne. Therefore, there is no suit in a civil court in Scotland, which depends on a British act, since the Union, which is common to both countries, in which English counsel might not claim the right of appearing; and, therefore, without going into further illustration of that point,

I take for granted your Lordships must hold, that if all that had been done by the statute of Anne, was to declare that what was treason in England should be so in Scotland, and that the Courts should proceed to inquire into it according to the forms used in England, it would be such an addition only to the law of Scotland, as applies to all other statutes referring to both countries; and, therefore, the identity of the Law in the two ends of the island, though proceeding from statutory authority, could afford no ground for saying that any but a Scotch lawyer could appear in a Scotch Court; and, therefore, the question is, whether the high tribunal I now address, is rightly to be considered as a Scotch Court or not.

My Lords, the statute of Queen Anne undoubtedly contains, besides the general and substantive enactment to which I have alluded, that provision, by virtue, and under the authority of which, your Lordships now sit here. It does provide also, "that the Queen's Majesty, her heirs and successors, may issue out commissions of Oyer and Terminer in Scotland, *under the seal of Great Britain*, to such persons as her Majesty, her heirs and successors, shall think fit; and that three of the Lords Justiciary be in the said commission of Oyer and Terminer, whereof one to be of the quorum, to inquire of, hear, and determine such high treason, and misprision of high treason, in such manner as is used in England." Now, my Lords, I understand that, under this enactment, it has been held, and is to be contended, that such commission of Oyer and Terminer as we are now met to attend, is not to be considered as a Scotch tribunal at all, but rather, as it were, a court of a common and general nature, and participating, though in an inferior degree, of the character of a *commune forum* of the whole empire, that unquestionably belongs to the High Court of Parliament, to the King in Council, and to the House of Lords, in its judicial capacity.

Now, with great submission, it appears to me, there is not the least ground for this parallel, or for ascribing to the present tribunal any one of those characteristics, in virtue of

which these tribunals are to be considered a *forum commune* of the whole empire. If I have the least notion of what constitutes a *forum commune*, it is this, that that tribunal or court has power and jurisdiction over the whole of the territory, in relation to which it is *forum commune*:—and this holds undoubtedly, emphatically, and indisputably, as to those tribunals to which I have just referred. The Parliament of Britain is the Parliament of Scotland. His Majesty, by his councillors, decides for both, and the High Court of Parliament sits for both parts of the united kingdom; and, therefore, all matters that are subject to the authority of those bodies, or that by any form of law can be brought within their cognizance, are matters in which, of course, the subjects of every part of the empire have a common and indistinguishable interest, and in which they have consequently a right to have their cases stated by any person qualified to practise in any of the courts in that territory, which is the territory of the *forum commune*. Now I ask your Lordships, is this commission of Oyer and Terminer, or is any commission that could issue under this statute, a *forum commune*? In this case, is there any part of the united kingdom but Scotland subject to the authority of this Court? Is there any delinquency committed any where but in the kingdom of Scotland, to which this tribunal can extend its consideration? Has it the least authority, or the least influence, the least right to interfere, sitting under the authority of this statute and commission, to take cognizance of any offence committed any where else? I do not merely say the Court sits in Scotland, because, by the law, it must sit in the county where the treason is charged to have been committed; but I say this Court *cannot sit* any where but in Scotland; and not this commission only, which is directed only to try treasons in particular places, but I say no commission of this description, or issuing under this statute, can sit any where else but in Scotland; because, my Lords, the commissions, granted for trying treasons in England, are not granted under the 7th Queen Anne; and all the commissions, to try treasons in Scotland, must sit by virtue of that statute, and that statute only.

But, my Lords, with submission, there is more in this case. My Lords, the law of Scotland undoubtedly is assimilated to the law of England by the statute in question, but, with submission, it is not entirely identified with it. There are distinctions and qualities, under which this branch of the law of England is extended to Scotland; or rather, under which this new law is engrafted into the system of Scottish jurisprudence. Your Lordships are aware, that in the matter of the qualification of jurors, as to which we were about to proceed, and in the matter of entails, as it affects a forfeiture on conviction, there is a distinction; and, my Lords, besides all that, there is another distinction of a character and description, that appears to me to be peculiarly important in the present question, and of itself I should humbly state decisive of that question, and that is, my Lords, that the proceedings, under such commissions, and under such commissions only, as issue by virtue of the Act of Queen Anne, are liable to be carried and removed into one of the established radical criminal courts of Scotland, and only into such court: For it is expressly enacted, that by Writ of Certiorari, the proceedings, by such commission, may be removed and transferred into the High Court of Justiciary.

Now, my Lords, see a little farther. I have spoken of the trial of treason, under such a commission as has here been issued; but, my Lords, that is not the only tribunal before which the offences created may, by this Act, be tried and inquired into according to the forms required by this Act. The original jurisdiction of the Court of Justiciary, and of the Circuit Courts of Justiciary, is preserved, not only because it is not abolished, but because it is distinctly recognised by the enacting clauses of that statute. Now, my Lords, consider for a moment how anomalous, how void of reason, the provisions of a law would be, which established or recognised two courts of concurrent jurisdiction for the trial of the same offence, by the same forms, and under the same new state of the law, in one of which persons of a different order and description should be entitled to assume and take the management of the causes from those who

alone could practise in the other. I conceive, on the argument I formerly hinted at, rather than urged, before your Lordships, that if there had been no power to grant a commission under the statute of Queen Anne, but a mere new law of treason for Scotland, and directing the form and process for trying it, it could only have been tried in the original criminal courts of this kingdom; and if there had been no such commission, the proceedings must have been in the High Court of Justiciary, and conducted exclusively by those entitled to appear there, without any foreign assistance, as in any other crime.

Now, my Lords, we have this very case in the statute of Queen Anne, by which, while it changes the law of Scotland, and creates a new branch of the Scotch criminal law, a form of proceeding is provided, by which every thing proposed to be done, may be done completely, and carried into effect by this statute, by a mode of trial, in which I conceive it to be plain, that no person, not entitled before to appear in a Scotch court, could have a *persona standi*. Can it be held, then, that by a choice of one of two courts of concurrent jurisdiction, or rather, in favour of the one of inferior jurisdiction, such persons should acquire a title to appear? The Court of Justiciary is clearly recognised as the high and the ultimate court, into which, in matters of difficulty or inconvenience, proceedings before the commission may be removed; but there is no provision for removing a trial, begun in the Court of Justiciary, under the statute of Queen Anne, into any commission, as being of a more proper nature.

Now, I will not inquire whether a person, entitled to appear before the commission, would be dropped, when the proceeding was removed into a court, as to which he could not have been allowed, otherwise than as an individual, to pass the threshold. This is a strange thing, admitting of no parallel in any other branch of our law or practice, and affording a strong presumption against that being intended, which must be assumed on the other side, if my objection is not well founded. But, my Lords, I lay comparatively

little stress on these considerations, I recur to the general proposition.—Upon what principle, upon what pretence of principle, can it be maintained that this is a British court? It cannot sit to try any general crimes committed in Great Britain? My Lords, I know a case may be supposed, and I will not dispute untried cases, but I will allow that one commission of Oyer and Terminer might be granted for the trial of treasons committed in England and Scotland, and might be sent to try treasons on the march lands, on the borders of the two kingdoms, and might sit one day in Northumberland, and the next day in Berwickshire. But though that might happen, I humbly conceive it to be quite clear, it would not sit under the same authority in both these places; for it would sit in England under the authority of those statutes, (which I do not pretend to know) under the authority of which, antecedent to Queen Anne, commissions had been granted; whereas, in Scotland, it could only sit under the statute of Queen Anne, which is a separate source of authority, a statute relating to Scotland alone, and therefore regulating proceedings in Scotland alone, and impossible to be referred to as the source and fountain of any *British* court. In so far as it is a commission for Scotland, it must be under the statute of Queen Anne; which is a Scotch statute, capable of regulating things in Scotland only; and therefore is a commission which can have no greater latitude of authority, than is derived from a statute circumscribed by locality. My Lords, the *commune forum*, in the case I have supposed, would be a constitution by statute of a new forum to try treasons committed in Great Britain; and wheresoever the seat of such a tribunal might be, or even if it were made ambulatory, that court, from its constitution and description, would answer the description of a *commune forum*. If it had been enacted, for example, that in all time hereafter, the law being the same, all trials for treasons may, or shall proceed before a Court of Oyer and Terminer, to take cognizance of all treasons in Great Britain, and that it shall sit at London, York, or Edinburgh, that would be a *commune forum*, be-

cause it would have authority over all parts of the island, and take cognizance of all parts of the island. That would be a statute touching both ends of the island; but the statute to which alone we can now look as the foundation and germ of every thing, is a statute of a local nature, innovating the law of Scotland, but touching in nothing the law of England, and doing nothing whatsoever with regard to English courts or English delinquents. Then, how can this be a British court? In what respect can it be said, that any thing done under the statute of Queen Anne, under which alone, it is admitted, this commission can be granted, can constitute a British court? Certainly not from the circumstance of the proceedings being assimilated to the law of England, as to the form of trial, and certainly not because it does issue, by a statutory and precise authority, under the Great Seal of Great Britain, and not the Seal directed by the Articles of Union to be used for the Great Seal of Scotland.

It is necessary here to look back to the Treaty of Union, which regulates the Seal,—but before reading the clause to your Lordships, I shall say in one word, that it appears to me quite manifest, that this commission has not issued in terms, or under the authority of that article in the Treaty of Union. That Treaty regulated the use of two Seals. The Union Seal, in this country, was the seal to be used instead of the old Scotch Great Seal, with regard to proceedings formerly known to the laws of either country. But the commission, now issued, does not fall under that description; and neither does it fall under the description of writs to which the Great Seal of Great Britain shall be applied; and the sum of my argument is, that the case of such a commission, not being regulated and provided for by any thing in the Treaty of Union, was regulated and settled, *for the first time*, and as an unprovided case, by the statute of Queen Anne first authorizing such commissions.

My Lords, the 24th article of the Treaty, as your Lordships know, declares, that "from and after the Union, there shall be one Great Seal for the United Kingdom of Great

Britain, which shall be different from the Great Seal now used in either kingdom." And here is the enacting clause for this new Great Seal.—"And that the Great Seal of England be used as the Great Seal of the United Kingdom, and that the Great Seal of the United Kingdom be used for sealing Writs to elect and summon the Parliament of Great Britain, and for sealing all Treaties with foreign princes and states, and all public Acts, instruments, and orders of State, which concern the whole united kingdom." Now, with great submission to your Lordships, this enumeration is exclusive of the present writ or commission. My Lords, it is quite plain from the enumeration, that these writs, which are to have the Union Seal, are those public instruments, in which the majesty of the whole state is embodied, with reference to foreign or extrinsic matters, or matters relating to the whole country, the summoning of Parliament, or any acts that are to operate in both ends of the kingdom, or beyond it. Then follows the provision with regard to the new Seal of Scotland. "And that a Seal in Scotland, after the Union, be always kept and made use of in all things relating to private rights or grants, *which have hitherto passed the Great Seal of Scotland*, and which only concern offices, grants, commissions, and private rights, within that kingdom." My Lords, these are the only operative parts of the clause; and the meaning plainly is, that this new Seal shall be used in all things in which the Great Seal of Scotland had formerly been used. Now, my Lords, it may no doubt be asked, if this is to be considered as a Scotch court, why is not the commission to your Lordships sealed with that Seal? And I answer, because no commission of Oyer and Terminer, no such temporary tribunal, was at that time known to the law of Scotland.

See then how awkward it would have been to have left this matter to be regulated by the Treaty of Union. Such a commission had never before been seen in Scotland. It could not therefore be offered to the new Scottish Seal for "writs which had hitherto passed the Great Seal of Scotland."

Neither could it, under the Treaty, be offered to the Great Seal of Great Britain; for it was not an order of State, it was not a public act or instrument, like a treaty with a foreign prince—it was not a matter commanding something to be done over the whole kingdom—it was touching and concerning Scotland only, and by virtue of a statute, which touches Scotland only; and, therefore, I conceive it was necessary, when this innovation was made in the law of this country, that *some special enactment* should be made, in order to avoid that very construction which this enactment is said to confirm, and which, I think, it excludes; for if the case had been, that the Act of Queen Anne had declared it should be competent for the Queen to grant commissions to Scotland, without saying any thing about the Seal, it would be difficult to say, that whatever choice was made, objections might not have been started. And it was to avoid these objections, as I conceive, that the special provision was enacted. If I am right in the premises of this argument, I think I can scarcely be wrong in the conclusion; and I really do not see on what ground these premises can be questioned. Surely it will not be contended that such a commission as this falls under the first clause, which declared the Great Seal of the United Kingdom should be appended to writs for summoning the Parliament of Great Britain, and for sealing all treaties with foreign princes and states, and all public acts, instruments, and orders of state, which concern the whole united kingdom. In one sense, indeed, (a popular and metaphorical sense) every thing done in the most insignificant quarter, in a Baron or Baillie Court, concerns the whole kingdom, as a matter of example; but that is not the statutory sense. My Lords, does this concern the whole united kingdom? Certainly not; and therefore by what pretence could this be offered to the Great Seal of Great Britain to be sealed? As to the Scottish Seal again, this plainly was not a commission which "had formerly been in use to pass the Great Seal of Scotland," nor at all parallel to any such commission. All therefore that we can say is, that, in this new matter, the Parliament, in the plenitude of its

power and wisdom, has declared it was most convenient, and most conducive to the authority of the Judges, that their commissions should issue under the Great Seal of Great Britain. But that is done under the authority of the statute alone; and does not therefore infer any recognition of its concerning the whole kingdom. It does not proceed on any presumed interpretation of the Articles of Union, but on a regulation introduced *pro re natâ*. Parliament declares, that such commissions granted for Scotland, shall be good under the Great Seal of Great Britain; and it might have made them good, if they were signed by any petty officer in Orkney or Caithness. It is unnecessary, therefore, and incompetent, to go further back than to that act, to explain why the Great Seal of Great Britain is appended to those commissions: And thus we begin and end with the special statute, which declares, that a commission to try treasons under that act, altering the law of Scotland only, shall be sealed with that seal, and it is so sealed.

But does this special and necessary enactment at all touch and settle the question as to the nature of the tribunal? This is a tribunal for trial of Scotch crimes. It is a tribunal sitting under a statutory authority in the realm of Scotland; and it is a tribunal to administer the Scottish law only. That it resembles the law of England is no argument at all: with regard to Scotchmen it is nothing but the Scotch law; it is as much the Scotch law, as all British statutes extending to Scotland are Scotch law: The law merchant insurance and contracts is the same. But it is enough for us that it is the law of Scotland; and what more can you say of our new law of Treason, than that it is now the law of Scotland? We have nothing, in short, to do with the law of England here: that our law is assimilated to it is nothing at all; and I ask your Lordships, how it can at all affect the true nature of the Court, that, by a statute, which no person can controul, or question, the commission was directed to pass the Great Seal of Great Britain? It is not the worse for that; and if it had been declared, that it should pass under the signature of the

lowest macer in Scotland, or of any other individual, it would be equally good; and, therefore, the true nature of the commission would remain to be inquired into, altogether unaffected by the description of seal which had been declared fit to be appended to it.

My Lords, I must again remind your Lordships, that we are here to deal with Scotch law in a Scottish court, just as clearly as in any other case that could be suggested. We have no right to claim any part of our law as entirely indigenous. We have borrowed from Rome, and from ancient and modern England,—some things from France, and some from Holland. Our law is a tissue of shreds and patches; but can it be said it is not the law of Scotland, though even at the most ancient periods of our jurisprudence, some points have been borrowed from the neighbouring kingdoms? Surely, after a hundred years, it would be the law of Scotland, and nothing else. In the same way, I say that our law of treason, though assimilated to the law of England, is not identified with it; for there are distinctions, and your Lordships cannot proceed in every respect in the way they do in England. The nomination of jurors, and their qualifications, and the consequences of forfeiture, are different; and we should be embarrassed, in a new way, by a *certiorari*, which would puzzle some of the gentlemen now in my eye, to reconcile with their present pretensions. In all these respects the law differs, and the courts differ; and, therefore, my Lords, that with which we have now to do, is nothing but the law of Scotland, modified by the wisdom of the legislature, which is every day varying it: And, therefore, upon these grounds, in the statement of which I have occupied too much time, I submit I ought not, in addition to the many grievous disadvantages under which I feel I am to undertake the laborious business of this day, to be opposed with such terrific odds,—with the addition of such an auxiliary as is here brought against me; I, therefore, humbly submit to your Lordships, that I should only be opposed by those persons by whom I am accustomed to be opposed, and

with whom I am accustomed, with considerable apprehension, to try my strength.

Before I sit down, perhaps I ought to say one word more. I am told that this question is ruled by precedents. I am not aware of any precedent. I have heard, indeed, by common report, that some of the unfortunate persons who, under a special statute, were tried in England in 1746, for treasons committed in Scotland, were allowed the benefit of Scotch counsel to conduct their defence; but I know of no authority for the fact, nor how it may be.

Lord Chief Baron Shepherd.—In the year 1746, those accused of treason in Scotland were tried in England; and I think the statute, directing they should be tried in England, empowered the King to issue the commission to any county or shire of Great Britain. Now, suppose it had been a trial under a commission of Oyer and Terminer, in the north of the Tweed, could not any of his Majesty's English counsel have attended it?

Mr Jeffrey.—I am aware of your Lordship's difficulty; but I do not think the solution of that question, which I am far from considering myself competent to give, would affect that which now waits your decision. We have to deal here with the statute of Anne. The precedent of 1746 approached to the case of a court of statutory constitution,—a court of general and co-ordinate jurisdiction; and then, if the act gave authority to grant commissions over both parts of the kingdom, that might be said to be a *commune forum*; and if the fact were, as your Lordship suggests, that that was a statute applicable to the whole of Great Britain, a commission under that would of course be a commission applicable to Great Britain. But I trust I relieve myself altogether from the peculiarities of that case, and the difficulties under it, by stating that that statute being expired, and we being now reduced to the statute of Queen Anne, the question cannot arise here; and that disposes of the precedents of the greatest authority, both from the importance of the trials, and the length of time they have stood on the record. If, under some of those acts, the prison-

era had the benefit of Scotch counsel for their assistance in England, I would say it was under an act of Parliament permitting the commission to sit within Great Britain, thus constituting a *commune forum*, and so letting in all the prisoners to take such assistance as they could most easily obtain, or chose to rely on; and there every counsel entitled to practice in the Supreme Courts would be entitled to appear. Nay, even, if in point of fact, in a parallel case to the present, such an indulgence was allowed *to* the prisoners, to whom every reasonable indulgence is allowed, that would afford no ground for allowing it *against* a prisoner. I understand also, that in, I believe, the only parallel instance, in the trials under the commission in 1794, certain persons, eminent in the law of England, did assist the crown counsel in those proceedings; but I have understood that the leading counsel, Mr Anstruther, had been admitted to the Faculty of Advocates, and, I believe, Mr Dundas, who assisted in a subordinate part—

Lord President.—No matter how subordinate.

Mr Jeffrey.—I do not know—having allowed so great a man as Mr Anstruther to appear, they might allow his Esquire to pass under his shadow; but the material thing is, that in that case nothing was determined on argument or consideration of the question. The practice was admitted by the parties without opposition,—without any *dictum*,—without any sort of evidence appearing any where, that the point was under the consideration of the Court; without any intimation to the public that a decision had been formed; and, therefore, I submit there can be no precedent for a thing of this kind, where there is neither a rule of court nor practice, and when there was no interest to resist the appearance of a person like Mr Dundas, who was almost by birth entitled to claim a connection with the law of Scotland. I certainly do not use that as an argument; but I think it might be ungenerous to object to a person who was taking a subordinate part; and a single precedent would not be held, in a matter otherwise clear, to rule the law, or form any ingredient in the decision of the Court, to whose decision, for the first time, the question is now submitted upon argument.

Lord President.—It is impossible that this Court, if it had conceived itself to be exclusively a Scots Court, could, without any argument of Mr Jeffrey's, or on the part of any other person, have seen Mr Sergeant Hullock make his appearance here, without being struck by that appearance. It is such a strange anomaly, that an English barrister should claim a right to appear here in Scotland, that in the case of an ordinary crime, in the Court of Justiciary, let his claims from birth be ever so great,—or his part be ever so subordinate,—or the claim of compassion ever so strong, the first thing that would strike the Judges would be the appearance of such a person; and, therefore, it was not without due consideration that Mr Sergeant Hullock was received here at all; nor was it without consideration in 1794, that English barristers were suffered to appear in Edinburgh. The objection was not stated, nor was the question debated in open court; but it was well considered both here in this country, and by his Majesty's government above; and, I presume, it was well understood on the part of the counsel for the prisoner in that case, that it was in vain for them to contest the point.

But, in law, the Court has no difficulty upon the point, and I shall shortly state the grounds upon which the point turns. Your Lordships know that the Treaty of Union, if it had been concluded in general terms, would have made the two countries one and one out and out, leaving a very puzzling question behind, what was to become of the peculiar laws of both? It was intended to be a treaty of incorporating Union, out and out, except so far as the special articles provided for the regulation of different matters in the different ends of the kingdom. Accordingly, it was most anxiously provided, on the part of Scotland, with great jealousy, that its private laws should be preserved entire regarding its civil rights; but it was provided at the same time that the laws regarding the public right, policy, and civil government, might be made the same for both parts of the united kingdom. The only thing that kept their laws separate, was the article

that made them separate; but, in all other points, it was an incorporating Union. It was provided by that article that the laws regarding the public right, policy, and civil government, might be made the same, leaving it to the Parliament of Great Britain to consider to what extent they should be made so; but that Parliament had to do every thing left undone, to make the Union entire and complete.

Accordingly, in the matter of treason, the law was declared to be the same in both ends of the united kingdom—essentially the same—I may say entirely the same; because, where they were separate, it was still by special articles in the new statute of Anne; but the fundamental article of that statute of Anne is, that the law of treason shall be the same in both ends of the kingdom; and, from that moment, the law of treason became neither the law of England nor the law of Scotland, but the law of Great Britain, common to both,—affecting the subjects of both; for it is not treason in Scotland that affects the subjects of Scotland alone,—it affects the Empire altogether; and it is enacted that the crime shall be the same in both ends of the kingdom; it is enacted that the prosecution shall be the same; it is enacted that the trial shall be the same; it is now, therefore, the law of the united kingdom of Great Britain. Therefore, in so far as the law is the same, I take it the distinction between Scots and English barristers, with regard to that, is done away, just as it is with regard to the law, cognizant by the Privy Council, or the House of Lords.

With regard to the act of Queen Anne, establishing the mode of trial, there it was in the power of the legislature to say what sort of Court shall be peculiar to one or the other end of the island; but still to take cognizance of the law of Treason,—to take cognizance of the whole of it. In establishing such Court, the legislature might have authorised any kind of Commission; or it might have established a judicature common to both ends of the island. It did not establish a permanent judicature common to both, but it authorised the King to issue a Commission of Oyer and Terminer.

Now, what could have induced the Parliament of Great Britain, at that moment, to select the Great Seal of Great Britain, as the authority under which the Commission was to issue, in preference to the Great Seal of England or Scotland, except its conviction that it was issuing a British Commission? If it had been to be a Scots Court, surely the natural, I may say the legal, and the proper authentication of this Commission, would have been the Great Seal of Scotland; and it was as easy to put that into the act, as the Great Seal of Great Britain. If it had been to be a Scots Court, peculiar to Scotland, the proper instrument was the Great Seal of Scotland; but it took, in fact, the Great Seal of Great Britain: Why? For no reason, but because it was conscious, and knew it was creating a British Court; for Englishmen may commit treason in Scotland, just as well as Scotchmen; and, therefore, it selected very properly. I do not say it might not have been omitted, and that it would not have followed that the Great Seal of Great Britain might have been used; but that would have raised an argument why there is nothing said with regard to this being a Scots Court; and, therefore, to remove all doubt, it was thought proper to specify the Seal under which it should be issued.

But why did the Parliament take the Seal of Great Britain, when they might have taken the Great Seal of Scotland, unless that they knew it was to be a Commission of Great Britain, and not of Scotland? Therefore, the parallel, in my apprehension, is direct between this Court and the House of Lords. This Court administers neither English nor Scotch law, but the law of Great Britain; and the only peculiarity is that, by the law of treason, the treason must be tried within the county in which it is committed; and, accordingly, what has been the consequence of that principle? It is perfectly well known that the House of Lords, in trying a Scots appeal, judges of the law of Scotland, and by the Scots law alone; and the learned Lord now sitting on the woolsack in that house, would be guilty of injustice, if he were to judge by analogy to the law of England; and, in consequence, Scots counsel practice there daily. Scots coun-

sel can practice in English appeals. In the great case of literary property, Mr Dalrymple, a Scots advocate, afterwards Baron Sir John Dalrymple, practised in the Writ of Certiorari to the House of Lords. His right to appear was well considered, but it was found to be irresistible. Why? Because it was a British Court, though administering English law; and, in that case, Mr Dalrymple pleaded the cause for Mr Donaldson the bookseller. And, in the case of Mr Kinloch, Charles Hamilton Gordon, Esq. appeared at the bar of the House of Lords, and he was a Scots advocate alone; and, therefore, these proceedings are ten times stronger than this; because, in the case of Mr Donaldson, it was a plausible argument to be sure to say we are a British Court, but we are administering English law alone, and, therefore, English counsel only ought to appear before us; but it was found Scots advocates were entitled to plead there; and we have not the smallest doubt here, that in a Commission of Oyer and Terminer which has issued, and is about to sit at York, if Mr Jeffrey pleases to go there he will be received, and he must be received. But what is decisive on this point is, that in 1746, on the trials of the rebels at York and Carlisle, Mr Alexander Lockhart, and several other Scots advocates, appeared, and pleaded as counsel for the Scots prisoners, and no one ever thought of stating an objection; therefore, upon the whole, the Court dismiss this objection, and find that Mr Sergeant Hullock is entitled to appear.

Before you go farther, I must say, that I think, so far as your clients are concerned, they need not give themselves much uneasiness; because, if they are to judge of your assistance by the abilities which have now been displayed, and by your brethren on a former occasion, they may depend upon it their defence will be as well conducted as if they had Mr Sergeant Hullock for their counsel.

Mr Jeffrey.—My Lord, I hope I shall not forfeit any part of the credit my younger brethren have obtained, by what I am now going to say. I mean to submit to the Court a challenge to the whole array, or to the whole panel of the Jury, in respect of its being struck.

Lord President.—We must call the names first, to see that a certain number appear.

Mr Jeffrey.—I understand so, my Lord.

[*Twelve Jurymen being called, answered to their names.*]

Mr Jeffrey.—My Lords, I may mention, in the outset, what I dare say your Lordships will anticipate, from the description I have given of the objection, as being one to the whole array, that it is founded in the alleged incompetence of the Sheriff who returned the Jury; and, my Lords, I may here mention, that I take it to be clear, that under the words, however general they are, of the statute of Queen Anne, a prisoner arraigned for high treason in Scotland, is entitled to the whole privileges, and to the whole objections and challenges that would be competent to a prisoner, charged with the same offence, before any court in England, unless the statute itself has introduced some limitation or exception; and, my Lords, I believe I may also take it for granted, that, in a matter of this description, every formal and actual objection that can be made out, upon grounds of law, will be available to the party placed in the favourable, because unfortunate situation of the individuals, for whom I now appear; and that it is not necessary, in order to substantiate objections of this nature, that the prisoners should shew, though I think they can here shew, that they have a substantive interest in having them sustained. In short, my Lords, I take it to be clear that in this, even more than in all the branches of criminal law, it is clear that Form is Justice; and that it is enough for me to shew that an irregularity has occurred, which renders the proceeding disconformable to that which the law has enjoined, although it may be said that the proceedings that have been had leave the prisoner all the benefit that the form would have given him; and I think it is right that we should have this additional strictness of the law we have just borrowed, considering the many disadvantages to which that transference of the law exposes us; for while I am not to deny that the substitution of the new law of treason of England, for the old law of treason in Scot-

land, was a great and invaluable benefit; and while I am ready to admit that some things are favourable to the prisoner, as to the form of the trial, upon the whole I consider he would have been more fortunate in being tried by the old form of his own country. My Lords, if that had been the case, we should not have been embarrassed, as I, with the little attention and general professional habits I profess, acknowledge I have been, with an indictment of the bulk and contexture of this,—we should not have been embarrassed with intimations of writings, real or pretended, neither cited nor exhibited to us,—we should not have been distressed by having the last word taken from us by the counsel for the prosecutors, and by many other things of which we grievously feel the weight. In return for that, my Lords, we have the benefit, if it is a benefit, of a more precise and formal system of observances, that are imposed upon the prosecutors; and the benefit of all objections arising from any inaccuracies or deviations, which, from their complication, and their novelty in this country, may be more likely to occur.

Now, my Lords, under the general terms, that all the proceedings touching trials for treason in Scotland, shall be the same as in England, I understand this is carried back to every thing, from the first issuing of the commission, to the final deliverance after verdict, and embraces the whole form of proceedings with regard to the summoning the Jury; and, accordingly, I understand, and I believe the record shews it, that the Sheriff does not furnish the list of Jurors, according to the rules, or upon the authorities on which he furnishes such lists to the Justiciary or the Jury Court, but in conformity to the rules of the British courts, by virtue of a writ of distringas; and, therefore, in the execution of that writ, and in the condition of the person who executes it, I am entitled to require all those qualifications and observances that are required by that statute law in England, which, as to all these preliminary particulars, has been transferred in the mass to this country. Now, my Lords, in looking into the books of the law of England, I observe that that officer, who is entitled and required to strike the whole of the Juries, is an officer of

a description, and requiring to possess certain qualifications, which are not to be found in the person who has undertaken to perform the duty here.

I need not trouble your Lordships with any statement as to the radical difference in the nomination of that officer in Scotland and in England. It is known to your Lordships, that, by the ancient constitution of England, the Sheriff was a popular officer, chosen by popular election; and, though he now receives his ultimate nomination from the Sovereign, he is suggested by a number of eminent persons, judges and others, who report to the Sovereign a list of three persons, from among whom the Sovereign is bound, and has held himself obliged, to select a person to be Sheriff. The Sheriff, therefore, trusted with the nomination of the panel of Jurors, for trials in treason in England, is not the nominee of the Crown, which the Sheriff in Scotland is, and is only. In the next place, the Sheriff in England is an annual officer, and, by special statute, is disabled from holding his office, or from receiving a patent for holding his office, for more than a year; whereas, the Sheriff in Scotland is an officer,—and, in this county, we all know he is an officer who has received, and who has held his office, and, I hope, will continue to hold it, for a long term of years to come. In the next place, the Sheriff in England is, by precise statute, required to possess such lands and estate, in the county in which he has to perform his duty, as shall be sufficient to secure, not only the Sovereign, but the lieges who may have to complain of him, for any redress, which, in consequence of any neglect or impropriety of his conduct, he may be liable to at their hands. I believe I may add, in the fifth place, that the Sheriff, entitled to strike the panel in England, must find surety for the proper discharge of his business, to a certain amount; and, above all, I would state to your Lordships, that, by ancient usage, confirmed and modified by a recent, or, at least, not a very ancient enactment, an enactment of 3. Geo. I., cap. 15, he is expressly directed, before he is qualified to discharge any part of his office, to take a special oath, recited in the body of the statute; and, among other

things, expressly bearing that he will return "reasonable and due issues of them that be within his bailiwick, according to their estate and circumstances, and make due panels of persons able and sufficient, and not suspected or procured, as is appointed by the statutes of this realm."

Now, my Lords, I believe it will not be disputed, that, in one and all of these particulars, the officer, on whose return, and whose execution of the *venire facias*, the panel is presented as regularly returned, is deficient, and plainly disqualified. And I humbly submit it to your Lordships to be a thing not bearing argument, that if such a panel were returned in England, by a Sheriff who had no lands, or estate, or property in the county,—who had held his office for a period of a year before,—who had been appointed by the Sovereign, without the intervention of any other persons, representing in a manner the community, and who had discharged the duty without taking the oath required, it could not have been received as a panel returned by a qualified officer, and that he would have been disabled from acting, and would have been considered as a person merely usurping power as a private individual.

Now, my Lords, if that be the case, I submit there is no answer that can be made, unless a statute or a precise authority can be produced, by which I can be excluded from the benefit of the same pleas to the fullest extent; Because, although the trial happens to be within the realm of Scotland, it is no answer at all, with submission, that this return is made by a Sheriff, and that that Sheriff is as near the English Sheriff as the institution of the office, by constitutional law, and practice in Scotland, will admit. My Lords, I stand upon the form; I stand upon the words of the law; and I say I am entitled to the benefit of every one precise statute, which affords a precise interest to the prisoner, and entitles him to say something has been done irregularly; for, if *ita lex est scripta;* if the whole of these statutes to which I have referred, and which I am ready to read, are held, as I submit they must be held, to be observable, and observed, in Scotland, by the declarations of the statute of Queen Anne, then, my Lords, I hum-

bly submit it is no answer at all, if it were incapable of reply in other respects, to say you cannot get that county Sheriff in Scotland which the law contemplates in England, and, therefore, you must take what you can get. That is no answer, and if it were, the reply to it is, that the legislature ought to have been more provident, and ought to have dispensed with those requisites of an officer who is not made by the statute, but who is, by the general purview of the act, necessarily understood to be qualified, as required by the law of England, which was borrowed without exception; and, therefore, they ought to have delared otherwise, which would have been a detrimental relaxation of the law to the prisoner; or, it should have been provided, that the King should have power to appoint Sheriffs, *pro re natâ*, with a view to such trials, and to qualifiy them with a view to the law of England. I am not sure that the King could not do so without a statute, or that any thing could prevent him from appointing a Sheriff, *pro re natâ*, of the description, and requiring the oaths requisite in the part of the kingdom from which the whole law has been borrowed, for the benefit, on the one hand, and the prejudice, on the other, of the lieges of this country; and, therefore, my Lords, if it should so happen, that, in consequence either of the omission of such a statutory provision, or of the neglect of such an exercise of such a power, we are now in a condition in which no panel can be returned in this country, that will not bar or weaken the pleas of the prisoners, upon the objection, that it is incompetent to them as the law now stands.

To proceed, my Lords, an officer, a Sheriff, might go by the same name, and have none of the qualities. The Sheriff in Scotland might have lost all the identities it possessed originally with Sheriffs in England,—he might be a nominal officer during pleasure,—a mere sinecure appointment of the court,—he might be a person possessing none of the qualities in respect of which the power of striking the Jury was to be given; therefore, you are to look not to the nominal essence of the officer, but to those qualities in respect of which this responsible act is entrusted to him. Surely it is

not enough to say he is a Sheriff, though he has none of the qualities of a Sheriff, in consequence of which qualities alone he is empowered to act.

My Lords, I humbly conceive it is as impossible to maintain that there are circumstances which may be held equivalent, or that some of the provisions may be indifferent to any substantive effect; that though he has no lands in the county, he is sufficiently responsible from his property and character, and it is of no consequence where his lands lie. I am not to take that answer. Would it be taken in England? If the law requires there that he shall have lands in the county, is it competent to say, if he has lands in the county beyond, that is enough? I apprehend not. It may be said the Sheriff here takes an oath, which, though not the oath enjoined by the statute, is equivalent; but in a matter of life and death, would it be maintained in England, that because the gentleman was a man of honour, an oath was a superfluity, and it was a disgrace to bind him by an oath? Would it be enough to say, that he had taken a general oath, *de fideli*, when, on the face of the statute under which he was bound to act, he was required to take a precise oath, imposing upon him, and urging him to the performance of that duty, upon the performance of which he could not enter under any general equivalent precaution, or in any other way than by a precise compliance with the terms of the statute?

Lord President.—Your argument is founded on the supposition, that this writ can only be issued to the Sheriff of a particular description. Are you aware there are a great many Sheriffs in England elected in a different manner? The Sheriffs of London and Middlesex are elected by the city of London. The Sheriff of Westmoreland is hereditary. The High Sheriff of Durham, I believe, is named by the Bishop. If he is a Sheriff of a county, he is known to the law as the Sheriff.

Mr Jeffrey.—With regard to the nomination, the observation of your Lordship has weight, and may, for any thing I know, be decisive; but I am not aware that any of the persons are exempted from the other qualifications; and I think the Sheriff, named by the Bishop of Durham, or the heredi-

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tary Sheriff of Westmoreland, are liable to the same objection. I have that to your Lordships; but I submit, on the other points, that unless it is stated on authority, that in fact Sheriffs are entitled to act without taking that oath; that in fact Sheriffs are entitled to act without the qualification of property; that in fact Sheriffs are entitled to act who hold their offices for a term of years, and these objections apply, although there may be a difference in the mode of nominating them, I humbly submit, if I were called into Court in England, to answer before a panel of Jurors returned by a person, against whom I could state these disqualifications; and I put it to that learned Judge, who is most conversant with the law of England, whether that would be a good return—and if not, I submit it is impossible to hold from the mere circumstance of its being more difficult to obtain those qualifications with us, that I should be debarred of those objections, which would occur to me elsewhere; and, my Lords, I submit to your Lordships, that I should have the law, the whole law, and nothing but the law, in every article and tittle of every provision of the statute of Queen Anne, by which the proceedings in high treason are regulated. I am entitled to object, in the same words and syllables, as a person in Westminster Hall, or any tribunal in England, would be entitled to object; and, therefore, I humbly submit, upon the grounds I have stated, that this panel cannot be received, and your Lordships will be obliged to have recourse to those remedies, to supply the deficiency of those qualifications, which, I submit, is incurable in the present proceeding.

Mr Serjeant Hullock.—My Lords, I shall trouble your Lordships with very few observations, in replying to the objection taken on the other side; and if what I submit is not an answer, it is owing to my misapprehension of the way in which this objection has been put, because, in the course of my—I am sorry to say, not short experience, it has been reserved to me to hear, on some occasions, since I had the honour of coming into this country, objections of various sorts in point of law, which have been urged with great talent and learning, but none of them entitled to so little weight or answer as that just stated.

My Lords, I understand the objection to be this, that no Sheriff-depute—if I err in the names, I trust the Court will excuse me—that no Sheriff-depute, within any county within the kingdom of Scotland, is authorized by law to return a legitimate panel of a Jury, because we are told he is named by the King; with respect to the other objection, as to legal qualification, I will come to that by and by. Does the learned Counsel forget that which he must have known at some period of his life, that every Sheriff in England (except those alluded to) is appointed by the Crown? There is no Sheriff in England that is not nominated by the Crown, and does not hold his office by some patent or writ, with the exception of Durham, Westmoreland, and London and Middlesex.

Lord President.—There are other objections?

Mr Serjeant Hullock.—Yes, my Lord, but I say the practice of the English Courts does not furnish a single objection to the array, on the ground of want of qualification of the Sheriff. Did any Court of Nisi Prius in England, or any Court of Oyer and Terminer, ever investigate whether the officer, to whom the precept was delivered and directed, and who had returned it, had a title to assume the right he had exercised in making the return to it? I should like to have the authority, the case, and the occasion upon which such an inquiry was instituted. Will any gentleman say that the Court of Oyer and Terminer would say, why you, Mr Sheriff, have no lands in the county of York? You are appointed by the Crown—you can have no right. The array must be a vicious array—it is an array to which the man, standing upon his trial, must have a right to object, because you are elected like all other Sheriffs in the island; and it is important, for the moment, to get rid of this array. I say that the Sheriff, for any thing I know, may subject himself to pains and penalties for assuming an office, to which he is not eligible, but there is no proceeding of that sort; and I think, that after the writ is directed to a particular officer, we are to presume all these things are rightly done till the contrary is proved, and I am only to understand from the as-

sertion of the gentleman now, that the Sheriff has no lands in the county: but it is immaterial. The question is, whether or not these returns, made without imputation of partiality or improper conduct in the individual, without fraud, whether these are to be quashed for the reason averred?

The learned counsel has referred to the statute on titles and qualifications of High Sheriffs in England. I do not know what the statutes, as to Sheriffs, may be at this time, neither will the learned counsel, I think, affirm, that those are in existence to which he referred, but I know that High Sheriffs, in England, have been Sheriffs for counties in which they had no lands; and it is yet certainly for me to learn, when and how any objection to the panel, on that ground, can be urged against the Sheriff. The principle of an objection to the array is, that it has been improperly put together; that in consequence of some improper proceeding between the person making the return, and those instructing him, that panel has been improperly put together, which may produce injury and prejudice to the ends of justice; but there is not an insinuation of that kind on the present occasion.

I apprehend the inquiry is foreign to the present question, whether this country has gained or lost by the transfer of these laws to it, and it is immaterial whether this indictment is a long one or a short one. I trust my learned friend will find it is enough. It is not for us now to discuss that the question is, whether or not this is an objection, which if it be an objection, as I understand it, must constitute an objection in every county in this part of the island. The Court know better than I do;—indeed I know nothing at all about the matter. The Court know whether it is not usual, or whether it does not often occur, that the Sheriffs-depute are appointed for shires in Scotland in which they have no property. If that be so, the question is, whether that be the law—whether, in point of fact, the practice, which has prevailed for better than half a century, is now to be set aside on the ground of some alleged analogy to the law of England, which ought to prevail throughout the proceedings? I aver this would not be an objection in England, be-

cause I aver distinctly, and I challenge every lawyer to contradict me, that no man yet was ever so wild and fanciful as to submit or suggest an objection of this sort in England, because I say it is incompetent for the Court here to sit to investigate the title of the gentleman, who assumes to be the Sheriff-depute of this county. I say it is incompetent for the Court to investigate it—he acts at his peril. If he be not the legitimate Sheriff-depute, he acts at his peril; but it is no ground for the Court to interpose upon the present occasion. I submit, therefore, that the Court are to take these proceedings as they come before them, as the act of the legitimate authorised officers.

It would have been well if the learned counsel would have pointed out to whom the Jury process could be directed. Can he suggest to us here to-day to whom, in the absence, or in the defect of this officer, he would have this process directed? "Oh!" says he, "you are to find that out." I am at an utter loss to conceive a person to whom it can be directed. In England there would be no difficulty, provided the Sheriff was incompetent to make a return.

I do not wish to occupy more of the time of the Court. It appears to me that there is nothing in the objection. I may misunderstand it, though I have attended to it as much as I can. I submit, however, in the first place, that the objection is so broad that it can amount to nothing, for it would be an objection in almost every case in the annals of this country. In the year 1794, the process was directed to the same officer. Probably, I may be answered, he was not subject to this objection. The objection, in fact, ought to be verified by affidavit; but assuming that it is so, I submit to the Court, with considerable confidence, that there is no ground for this objection. By proving too much, it proves nothing; and in England, it could not be stated, or would not be listened to for a second, that the Court can be called on to investigate the right or title of the officer who has assumed the character.

Mr Jeffrey.—If we are to go on as we have begun, we shall waste a good deal of time in wondering at each other: But I

shall pass by my admiration of my friend, and come at once to the point; and, my Lords, I submit that the answer now made proves nothing by proving too much. What is the answer? That this Court can take no notice of an objection to the want of the qualifications of a Sheriff required by the statute. What! if I were to verify on oath, that he had forfeited his office before the return—if I could make out that he was a maniac, or that he was under an arrest for felony—if I could make out that he was dead, and that somebody else had used his name, it would appear, from the argument of my learned friend, that it is not for the Court to inquire by whom this important duty has been executed; and that all allegations, as to his incapacity, prove too much, and cannot be gone into. My Lords, is it a matter in which the prisoner has no interest? Is it a matter in which the Court has no jurisdiction, and no duty to inquire, whether the writ, handed in to it, is the writ of the proper officer, or of some individual who has usurped his character. If I could make out such a case, or to shew that the panel handed to your Lordship's clerk, is not returned by a person who is a Sheriff at all, not by a person of age, not by a denizen of this land, yet, according to the statement of my learned friend, no objection could be maintained. I make no answer to that, because, by proving too much, it proves nothing to the purpose; and, therefore, the only question is, whether the objections I make, and propose to verify, are objections of a nature, that if supported, are sufficient.

Lord President.—You do not aver, that he is not the Sheriff of the county?

Mr Jeffrey.—Not the Sheriff of the law. As to other matters, he may be the Sheriff of the county; but, as to trials for Treason, as touching the qualifications of that officer, he is not the Sheriff required.

Lord President.—As to the nomination of the Sheriff of Westmoreland——

Mr Jeffrey.—I pass by that. It is true, that in England the Crown nominates ultimately; but is it the same thing if the Crown nominates out of three, or out of a general number?

Lord Chief Commissioner Adam.—How would it have been before the Jurisdiction Act?

Mr Jeffrey.—That must have been regulated by statute.

Lord Chief Commissioner Adam.—The act says by the Sheriff, not by the Sheriff elected in a particular form.

Lord Justice Clerk.—The pannel is to be returned by the Sheriff.

Mr Jeffrey.—I do not deny that, but that Sheriff must be duly qualified.

Lord President.—There are different qualifications in England?

Mr Jeffrey.—By the 9th Edward II., 2d Edward III., 4th Edward III., and 14th Edward III., it is provided, "That no man shall be Sheriff, except he have sufficient land within the same shire where he shall be Sheriff, to answer the King and people." And that is repeated in all the law-books since, as being the law. I can refer to statutes for the whole of the statements I have made.

Lord President.—The statute says the Jury shall be returned by the Sheriff. You say all the English statutes of treason must be considered as embodied in the law of Scotland—then we have in the act of Queen Anne, a declaration that the Juries shall be returned by the Sheriff.

Lord Chief Baron Shepherd.—Suppose a Sheriff nominated in a county in England, where he had not the qualification required by the statutes, and he continued to act and returned process, I apprehend that would be good. He might be amenable in penalties, for his conduct, for aught I know.

Mr Jeffrey.—So far from denying that the return must be made by the Sheriff, that is the basis of my argument.

Lord President.—Must not it be by the Sheriff qualified within the county? The Sheriffs of Middlesex, Westmoreland, Durham, Norwich, and Bristol, are named, I do not know how, but when the act of King William says, that the panel shall be returned by the Sheriff, it must mean the Sheriff qualified according to the law of the place. Then when the act of King William is extended to Scotland, must it not in like manner mean the Sheriff of the county in Scot-

land? Such Sheriff is no more different from what was intended by the statute of William, than the Sheriff of Westmoreland—It means the legal Sheriff of the county.

Mr Jeffrey.—That objection applies to the argument on the manner of nomination only: But I submit that all the Sheriffs existing at the date of the statute of King William—all the Sheriffs existing at the date of the statute of Queen Anne, were bound to be qualified in the manner I have stated. They were bound to take the oath I have stated, and held their office, except in the instance of the hereditary Sheriff, only from year to year, and in particular with regard to the oath and qualification as to property. I ask the learned gentleman to shew an instance in which it was found, tha a Sheriff nominated any how, was held to be entitled to act any where, without a compliance with the act in those particulars, required in all counties and cities.

Now, the objection I submit to your Lordships, is on the point of the want of qualification, and the want of the oath. That is an objection, that must be available to me if it is available in England; and I say that the answer, that you must take such a Sheriff as you can get in Scotland, does not apply; because they might have taken the requisite oath from the present Sheriff without requiring a new statute; and before discharging his duty, he is bound to take that oath, because all persons are bound to do it. Surely there is nothing to prevent his Majesty's appointing, as Sheriff, a person qualified in point of property; and therefore, I submit, if I could be heard in England, to say a Sheriff cannot act without being qualified, and if he does act without being qualified, that it cannot be a personal penalty against him, but his acts must be null in respect to any interests vested in the party on trial for his life, for whose behoof the qualifications are required: For the qualifications surely were not enacted to grace the dignity of the office, or to comply with the caprice of the Sovereign, but to secure the rights of the subject; and if the Sheriff acts without them, he acts without warrant and authority, and his actings are the actings of an unauthorised individual; and, therefore, upon that ground, I submit to your

Lordship no answer has been made to my objection, and that that objection, standing on the authorities I refer to, will disqualify this person from acting, and will render this act null, of which your Lordship can take no cognizance on the present occasion.

Lord Justice Clerk.—It is clear to me, that there is nothing in this objection, or that the law, declaring the course of proceeding to be pursued, would have been inoperative. It merely declares, that the form of process shall be the same—the law the same—the manner of trial the same—and, when we refer to the statutes on treason, they require a certain proceeding by the Sheriff. Of course the Sheriff in Scotland must be the person appointed to do the duty, or there could be no proceeding, for there is no foundation in law for saying that the King could establish a Sheriff *pro re natâ*. He has a power to nominate Sheriff-deputes in Scotland, but no authority to create a Sheriff *pro re natâ*. What was the case with regard to the county of Mid-Lothian in 1794, for I will not allow it to be said the learned persons on that occasion could have shut their eyes to what is said to be clear law, by sanctioning what there took place. The Sheriff had taken no such oath as is now said to be necessary, nor had he given surety. In short, he was as much disqualified as this Sheriff, but that he held some land in the county—yet that process went on, and the Jury proceeded in those trials, and convictions followed, and executions. To hold this was contrary to law, would be nothing short of a libel on that tribunal.

Lord President.—According to the argument of Mr Jeffrey, the Sheriff need not obey the writ—indeed all our proceedings will go for nothing, for we have been travelling about the country doing nothing, and we cannot suppose the legislature so stultified as to say a proceeding should go on, when it had not provided the means to take the first step.

Lord Chief Baron Shepherd.—If this objection be well founded, it is clear, ever since the statute of Queen Anne, all those who advised proceedings in England, as well as in Scotland, have been under a complete mistake and error; for if the Sheriff of Scotland, qualified as the law of Scotland

requires, and appointed as the law of Scotland requires him to be, is not to execute the process, there is no officer known to the law of Scotland who is.

There may be *casus omissus*.—Let us see whether this is possible, after all that has been done. In the first place, in the year 1746, although the persons who were then taken up were tried in England, there were four or five Commissions issued to Scotland. I know there were, because I have seen the returns, and the proceedings under them. The only person who summoned the Grand Jury in Scotland, (and the same objection applies to the summoning the Grand Jury, as to the summoning the Pettit Jury,) was the Sheriff, there was no officer but the Sheriff to execute those precepts. He did execute those precepts, and returned the Grand Jury, and in one county bills were found. In the other they were not; but it is clear that at that time it must have been very well considered, because the very intention of issuing those commissions was for the purpose of having the bills found, in order to proceed to outlawry upon them. In the year 1746, there were one or two commissions into Scotland—no other person or character to execute the process but a Scotch Sheriff, constituted according to the law of Scotland; and that this character was considered a proper character to execute the process, is pretty clear; for, in the reign of George the Second, an act was passed to institute certain proceedings to pursue persons to outlawry; and the Sheriff of Scotland (who is coupled with steward) is designated as the officer to execute the *capias*, the *exigent*, and all the other proceedings created by that statute.

There is another observation to be made, by which it appears that the Courts here have been acting illegally, if this objection is valid. Who executes the process of the Exchequer? The Sheriff—the Sheriff who is named in the statute; but if that does not mean Sheriff qualified according to the law of the place where he acts, but Sheriff according to the law of England, from the 6th Anne, there has not been a *capias* from the Exchequer that has been well executed. It is not possible that the legislature, at the time this act passed, did not look at the Sheriff *de facto* as the proper person.

It is true, as has been stated, that in England there are a great variety of Sheriffs. The hereditary Sheriff in Westmoreland, and formerly in Scotland, all of them were hereditary, which was changed by the statute of George the Second. The Sheriffs of Bristol, London, Norwich, and many other places, are constituted quite of different sorts of persons and classes of men, from the Sheriffs of counties in England; and, therefore, whatever is the qualification of the Sheriffs of counties in England, the only question is in executing the precepts in the law of high treason, or any other, whether the precept be a precept directed to the Sheriff as Sheriff to execute it. I confess, therefore, I have not the slightest doubt this is not a valid objection.

Lord Chief Commissioner Adam.—I would not say a word on this subject, after the able manner in which it has been treated, were it not that I think the whole law on the subject may be derived from an accurate view of the two acts. With regard to the act of Anne, I agree that that transfers the law of England, as to treason, to Scotland, and with it all the regulations of the act; then that brings it, in my opinion, to the consideration of the terms of the act of William III., that the prisoners "shall have a copy of the panel of the Jurors who are to try them, duly returned by the Sheriff, and delivered unto them, and every of them respectively, two days before they shall be tried for the same." Now, so stood the law at the time the act of Queen Anne passed, what had the legislature to contemplate? It had to complete the law of England—Sheriffs created by the Duke of Norfolk—by the King—by the people, and by local jurisdiction. Then what was the legislature to do when it transferred the law to Scotland, at that time under the hereditary jurisdiction, but to suppose that that office was referred to the officer known by that name? Accordingly, antecedent to the year 1748, the Sheriff-hereditary, the Sheriff who executed for him, his deputy, would execute this warrant in the cases stated. Now, since that act passed, we have Sheriffs of a different description, nominated by the King, with certain qualifications which entitle them to be so nominated—those qualifications are not impeached in any way; then, the question is, whether

the Sheriffs of this county, or any other county, who are to act under this Commission of Oyer and Terminer, have, or have not, acted regularly in the discharge of their duty, in the character of Sheriff; for that is all that is requisite; how that Sheriff is to be constituted, is not stated by the legislature. Upon these grounds, I am of opinion, there is no reason to admit the challenge to the array.

Lord Gillies.—I am of the same opinion.

Lord Advocate.—My Lord, we will proceed first with the trial of Andrew Hardie.

Mr Jeffrey.—My Lord, I am not going to argue a point; but, that nothing may be lost sight of, though it has not been argued formally, I beg leave to state, that it may appear, that I request the Crown will challenge before the prisoner, and assign the cause of challenge before they do it. I know they are not likely to do it, but I make the request. I wish also to make another statement; I observe that the Jurors are required to state their qualifications as to property; now, there is another question which I should like to have put at the same time, I should like to know when they were summoned, and where they were summoned; when they were summoned, may afford an objection under the statute of William and Mary, which requires that the Jury shall be summoned six days before the trial. I think it will save troubling other persons if the clerk asks the question; I shall ask it if he does not.

Mr Serjeant Hullock.—For the purpose of saving time, I object to this course of proceeding. That act of Parliament is not law now; I believe it has expired, or if it be in existence, it is nothing to the prisoner when the Jury is summoned. It may be a matter of excuse to the Juror, that he has too short a notice to come; but, in point of law, it will be found, I believe, that it is merely a ground upon which the Juror may say to the Court, I was only summoned last night, or the day before. It will be found, on minute investigation, or tracing, which my learned friend has not an opportunity of doing, that that act expired about the middle of the reign of George the Second.

Mr Jeffrey.—To that point I am not prepared to speak. I find, in the most recent books, that it is mentioned as an existing statute, for which I must refer to the wisdom of the Court, whom I must take leave here, as well as in every other matter, to consider as my assistants. I cannot argue that point, because I am not aware how the fact is, except from seeing it stated in books of authority, into which, within a short time, I have had an opportunity of looking; but if it is required that Jurors should be summoned six days before the period of appearance, that is an objection which the prisoner is entitled to insist on; for if they are not duly summoned according to law, then they are not summoned at all. I may mention, in point of fact, Mr Chitty's Discourse on Criminal Law, where it is stated to be a statute in observance at the present moment; and, if it is in force, it requires that they shall be summoned six days before the day of appearance; it is not merely to be said they disregard the summons, but they are not duly summoned at all. If a person chuses to appear without any citation or exhibition to him of authority, the Crown may put him in the list, and on the Jury at once.

Lord President.—You must have a list of the Jury, you know.

Mr Jeffrey.—I apprehend the want of the regular mode of summoning is a defect of which the prisoner may take the benefit; and I do humbly submit that a statutory enactment is not to be held to be made to provide against the smallest or the most unlikely thing of any to happen The summons is a thing required *ex necessitate;* and if he is not duly summoned, he is not summoned at all. I submit, under these circumstances, I cannot speak to the point of the expiration of the statute; but, if it subsists, I apprehend I am entitled to have the benefit of it. The act is the 7th and 8th William and Mary.

Lord Chief B ron Shepherd.—There is a qualification in the 5th section, and I will tell you what I understand by it. There are certain writs in England which have a certain number of days between the teste and the return—writs from the King's Bench; other writs require no interval, such as

precepts for Juries for gaol-delivery, and also precepts for Juries at a session of Oyer and Terminer; and, in the 7th and 8th of William and Mary, there is a proviso, that nothing in that act shall extend to any writs or precepts, except where there are six days between the teste and the return. Now, these precepts for Oyer and Terminer, and gaol-deliveries, have six days between the teste and the return; but yet that statute has always been understood, I believe, not to extend to any cases, except where it was necessary to have six days. Now, if the six days were imperative, every return in England would be erroneous, because they are returned instantly. So, in the Crown Office, the writs for Oyer and Terminer, as well as in gaol-delivery, have no necessary interval between the teste and the return; besides which, there is another thing, that statute of King William certainly has expired; and I do not wonder at a person being misled, because, in the margin of Ruffhead, you will find a note, that it is continued by the 6th George I., and by a statute of George II. But that is not so; the first act passed for three years; it was continued by the statute of Queen Anne, and by a statute of George I., for another certain time; but the statute of George II., which is supposed further to continue it, is perfectly silent on the subject; and, in consequence of the efflux of time, the statute is gone. Even, if it were not so, the qualification, at the latter part of the statute, would shew that the serving the Jury six days before only extends to cases where, by law, a certain number of days are necessary between the teste and the return of the writ; and, upon that practice, for the last thirty years, in the Crown Office, they have all proceeded.

Lord President.—It was a temporary statute, and expired of itself, if it was not renewed.

Lord Chief Baron Shepherd.—Besides that, I think it would only be an objection for the Juror himself. In the statute of Westminster, Jurors are excused for certain causes; and it has been decided, for ages, that such as these are objections for the Juror, but not a ground of challenge for the prisoner.

The Jurors returned by the Sheriff were called over, when the following were excused.

Sir Samuel Stirling, Baronet, on account of being a practising advocate.
Thomas Graham Stirling, Esq. on account of illness.
John Alexander Higgens, Esq. on account of illness.
Alexander Riddell, copper-smith, on account of deafness.
John Walker, gentleman, on account of being in the militia.
Thomas Traquair, wright, on account of deafness.
John Baird, Esq. on account of absence in London.
John Cook, merchant, on account of age.
James Potter, wood-merchant, on account of age.
John Campbell, Writer to the Signet, on account of being the partner to the agent for the prosecution.
Robert Muirhead, Esq. on account of illness.
John Forrester, not properly described in the panel.
John Clack, gentleman, on account of illness.
William Oswald, on account of age.
Robert Gow, gentleman, on account of illness.
James Smith, Esq. on account of illness.
James Cuningham, as being Lieutenant-Colonel of the Stirlingshire militia, then on duty.
David M'Lew, gentleman, on account of age.
Joseph Douglas, gentleman, on account of illness.
Thomas Kidston, on account of deafness and illness.
William Russel, portioner, on account of absence at the time the summons was served.
Charles Lenox Cumming, Esq. having left the county before the summons was served.
Patrick Doig, Esq. as being a medical practitioner.

The Jurors who answered to their names were again called over.

Thomas Dundas, of Carronhall, Esq.—challenged by the prisoner.

Andrew Hutton, writer—sworn.
James Bryce, bookseller—sworn.
James Wright, writer—sworn.
James Forman, bookseller—challenged by the prisoner.
Alexander Wilson, carpet-manufacturer—sworn.
Alexander Smith, of Canglor, Esq.—challenged by the prisoner.
Daniel M'Ewan, grocer—challenged by the prisoner.
William M'Farlane, baker—sworn.
John Thompson, carpet-manufacturer—challenged by the prisoner.
John Birch, gentleman—challenged by the prisoner.
Andrew Neilson, gentleman—challenged by the prisoner.
Robert Young, carpet-manufacturer—challenged by the prisoner.
William Glas, timber-merchant—sworn.
Robert Gillies, tanner—challenged by the prisoner.
Allan Johnston, architect—sworn.
Robert Hill Winter—challenged by the prisoner.
Alexander Bowie, mason—sworn.
James Reid, timber-merchant—sworn.
William Turnbull, gentleman—challenged by the prisoner.
John Cusine, gentleman—challenged by the prisoner.
John M'Donald, grocer—challenged by the prisoner.
Henry Johnston, of Meadowbank, Esq.—challenged by the prisoner.
John Bauchop, of Bogend, gentleman—challenged by the prisoner.
John Stewart, of Corntoun, portioner—sworn.
John Graham, Esq. of Myothill—challenged by the prisoner.
Thomas Jarvie, of Risk, gentleman—challenged by the prisoner.
Peter Littlejohn, of Clifford-Park, gentleman—challenged by the prisoner.
John Burd, of Seafield, Esq.—sworn.
John Wilson, carpet-manufacturer—sworn.

The Crown made no challenges.

THE JURY.

ANDREW HUTTON,	ALLAN JOHNSTON,
JAMES BRYCE,	ALEXANDER BOWIE,
JAMES WRIGHT,	JAMES REID,
ALEXANDER WILSON,	JOHN STEWART,
WILLIAM M'FARLANE,	JOHN BURD,
WILLIAM GLAS,	JOHN WILSON.

Lord President.—I have to announce to all persons concerned, that no part of the proceedings on this trial, (and more especially the speeches of the counsel,) and no part of the evidence be published, till this and all the trials, in this and the other counties included in this Commission, be brought to a conclusion, otherwise, the severest punishments that this Court can inflict will be pronounced against them. It is essential to justice; for it is in vain that witnesses are shut up, if they can read, the next day in the newspaper, what has been said by others in Court; therefore, let all persons take care what they are about, for the severest punishment will be inflicted upon them.

The Jury were charged with the prisoner in the usual form.

The Indictment was opened by Mr HOPE.

Lord Advocate.—May it please your Lordships,—Gentlemen of the Jury,—After much unavoidable delay, we have at last arrived at that important stage of our proceeding when one of the parties, against whom the Grand Jury of this county has found a true bill, for the crime of High Treason, is placed in the hands of a Jury of his country, to have his guilt or innocence by them decided on.

Gentlemen, much as it was to be wished that these trials should have sooner followed the occurrences which occasioned them, it is at least satisfactory to think that the person at the bar will suffer no injury by the delay; because this will be admitted, that these trials have come on at a moment when nothing connected with the state of the country, such as existed at the period when those events to which I have

alluded occurred, and which might be presumed likely to influence the minds of the Judges, is at all felt.—The country is now perfectly tranquil, and you are consequently placed in circumstances which must enable you fairly to discuss the case between the prisoner and the Crown. A part of this delay has been occasioned in going through the necessary forms, in which this Court has been occupied nearly three weeks,—forms which may appear tedious and unavailing, but which are of importance for securing that great object, namely, a fair and impartial trial to the person now at your bar.

Gentlemen, it must form a pleasing reflection to observe, that, in our sister country, whence we borrow this branch of our law, infinitely more pains is bestowed in securing to the prisoner the means of a fair trial, in the case of high treason, than of any other offence. The prisoners are, by the statute of 7th of King William, entitled to be furnished with a copy of the indictment at least ten free days before they can be called upon to plead: they are entitled, at the same time, to be furnished with a list of the Jurors who are to judge between them and their country, and of the witnesses who are to prove the case. It is declared further, that every overt act shall be proved by two witnesses; and, finally, they are entitled to what no other persons have the advantage of, namely, counsel, not only to plead points of law, as occurs in other cases in England, but to speak to the whole facts of the case, as exhibited against them. These advantages, Gentlemen, may look small in our eyes, who are accustomed to see them applied to every case in this part of the kingdom; but, in two respects, even here these prisoners have an advantage: they have the advantage of challenging, without cause, the Jurors who are to judge of their case; and thus, in some manner, to have a Jury of their own choice. There is another advantage they possess, in which I greatly rejoice; they can be put on their trial solely in consequence of the verdict of a Grand Jury of their country. In this part of the kingdom, you know, the right to determine who shall be prosecuted, is vested with the officers of the Crown; and, though it is satisfactory to know, that no complaint has ever been stated

of an unjust prosecution having been commenced, or of one that called for trial having been omitted, yet my learned friends will concur with me in feeling that it is most satisfactory to us, that of that responsibility we are, in the present instance, relieved; and that, in this case, it has been left, not to us, but to a Jury of this county, to decide how far there are grounds of accusation. This, you will observe, is the only thing that has been found by the Grand Jury; they have merely found, from the evidence before them, that there are grounds to put the man, now at the bar, on his trial; they have not found grounds for his conviction; on this point it is *your* duty now to decide.

Gentlemen, in most cases, into which I have glanced, of a similar nature, I have seen it usual for the counsel, in my situation, to point out to Juries the great importance of the duty they have to discharge, and the necessity of banishing from their minds every thing they have heard out of doors, and every thing that can influence their judgments, but the evidence they shall hear. I conceive such observations are unnecessary to you who have been before Jury-men. Though our forms are English, and the law is of that description, yet the rules by which you are to be guided are the same in this as in other cases. You are to judge, from the evidence, of the guilt or innocence of the party; you are to give him all the benefit of doubt, if the case comes to a point of doubt; on the other hand, if you are satisfied, from the evidence, that guilt is brought home to this individual, it will be your duty to find a verdict such as will be satisfactory to the country, and consistent with the evidence so laid before you.

Gentlemen, it is my duty, and it is a proceeding that does not occur in general in our trials, as Crown Counsel, to address the Jury at this period of our proceeding; perhaps, however, this is not unuseful, because it often occurs in our trials that the Jury are uncertain to what points to direct their attention. Knowing the scope of the evidence is a matter which cannot fail to be of advantage, and this being a point which is regulated in the sister country, it must be observed on this occasion. It is my duty, therefore, to state to

you shortly, the law, as applicable to this case, and the facts which we propose to instruct in support of it.

Gentlemen, the indictment which has been read contains, as has been stated to you, four different counts or charges; two of those are founded upon a very ancient statute of 25th Edward III., cap. 2; the other two are founded upon a more modern statute, namely, of the 36th George III., cap. 7. This last, however, is generally considered as not, in truth, making any alteration in the law of treason, but merely declaring certain acts to be treason, which, under the former act, were overt acts of treason; in fact, however, the four counts amount to two charges,—the one, that the prisoner was guilty of certain acts inferring his determination to imagine or compass the death of the King,—the other, that he was guilty of levying war against the King.

Gentlemen, in stating the law to you, upon the subject, as applicable to the present case, I certainly have to regret that time has not permitted the learned Judge, now presiding, to comply with the wish of the Grand Jury of Stirling, in giving to the public his Charge to that Jury; for, if that had been in your hands, it would have relieved me from saying any thing on the subject; as you there would have seen the law, with respect to this crime, explained, in all its bearings, in a manner that could not fail to carry conviction and satisfaction to your minds; that, however, not yet being accomplished, I am under the necessity of stating to you what I understand to be the law, as applicable to the present case.

Gentlemen, with respect to the first of these offences, charged against the prisoners, namely, compassing and imagining the death of the King, I am unwilling to enter on it, because I am of opinion that the charge against this individual comes more distinctly under the second head, namely, that of levying war against the King, in his realm. With respect to the first charge, Gentlemen, that of compassing or imagining the death of the King, you must well know, that, in the case of individuals, a capital sentence does not follow in the case of homicide, unless the person be actually killed; but standing in the high situation which the

Sovereign of these dominions occupies, the law has been careful to guard his person, by affording it special protection, and has made the mere intention, or planning to take away the life of the King, equal to the actual murder in the common case; provided always that such intention be proved by acts,—because, the mere intention, if kept in a man's own breast, cannot be cognizable in this world, or by any human tribunal; but when such intention is made apparent by act, the law declares it treason, though unaccompanied by the death of the King. Gentlemen, by the construction of all the lawyers whose authority is listened to in England, this is not confined to the actual imagination to put the King to death; but it applies to every attempt indirectly by which that life may be put in danger; to all attempts against the government of the country; for every one must feel how impossible it is to carry into effect any proceeding having for its object the overthrow of the government of the country, without putting the King's life in peril; and accordingly it has been held, that a conspiracy of this description does itself constitute an act of imagining the death of the King; in confirmation of which it may be known to some persons here, that in our own country, about twenty-six years ago, two persons, of the names of Watt and Downie, were tried at Edinburgh, and one of them executed for a conspiracy to overturn the government, which was held to amount to a compassing the death of the King.

Gentlemen, I say I am unwilling to dwell on this part of the charge, because, in truth, when I state to you that the nature of this charge is to apply to an actual violent attack by men in arms against the King's forces, it is needless to prolong the discussion regarding the imagining the death of the King; I must, therefore, direct your attention to the other part of the case, namely, levying war against our Lord the King in his realm. It is under that charge that I conceive the facts that I am to state most distinctly and clearly come; and, therefore, I shall very shortly direct your attention to that count.

Gentlemen, to con stitute this charge, it is necessarythat two things should be made out to you by the overt acts. In

the first place, that a war has been levied; and, in the second place, that that war has been against the King; because, if the war or attack shall be of a private nature, not for a general purpose, but connected with a private grudge of any kind, that is not levying war against the King. Gentlemen, that attacking the King's forces by arms is necessarily a levying of war against the King, is a proposition which must be so apparent to the good sense of every man who hears me, that if I were to dwell on that subject, I should deservedly fall under your censure. I need hardly quote authorities to support a proposition, which, if it were not law, there seems to be an end of all law of treason. Foster says,—" Attacking the King's forces, *in opposition to his authority*, upon a march or in quarters, is levying war against the King." If, then, I can make out the fact, that the prisoner at the bar did, while in arms, accompanied by others, attack the King's forces, in opposition to his authority, there can be no doubt that this was levying war against the King.

It is not necessary for my purpose, but it may illustrate the matter, to mention, in the second place, that it is not requisite even to constitute a legal levying of war, that there shall be a positive attack upon the King's forces; if there shall be an insurrection with a view to that attack, if all previous proceedings are arranged for the attack, the fact of the individuals not persevering, does not alter the case. Accordingly the same author that I have quoted mentions upon this subject, " Insurrections for redressing national grievances, or for the expulsion of foreigners in general, or indeed of any single nation living here under the protection of the King, or for the reformation of real or imaginary evils of a public nature, and in which the insurgents have no special interest, risings to effect those ends by force and numbers, are, by construction of law, within the clause of levying war; for they are levelled at the King's crown and royal dignity;" and accordingly, Gentlemen, in the course of a set of trials which occurred at Derby, copies of which are on the table, and which were conducted by a learned Judge, now on your bench, persons were convicted and executed for

levying war, where the fact was only an insurrection to levy war, and where the individuals concerned took fright, and did not chuse to meet the troops sent against them; there, where there was no actual attack, still the insurrection being complete, the purpose being clear, that was held a levying of war against the King, and the persons suffered accordingly.

Now, Gentlemen, as this is the nature of levying war, so levying war must be against the King,—that is, against the King personally, or against his government or constituted authorities, the purpose must be a general one,—nothing private, nothing unconnected with the general government of the country; but if it be intended against the King personally, that is a certain treason: to attack the King personally, or his troops, which is the same thing, is a direct attack on the King; but it may be an indirect attack on the King, if it attacks his government; and of this you have a recent example in the case of Thistlewood, where the persons were convicted of levying war against the King, for doing what? for an attempt to put to death his ministers. That was an attack, not upon the King personally, but upon his government; and, as such, it was ruled by all the Judges of England, that it amounted to the crime of treason, by levying war.

Gentlemen, I really feel unwilling to dwell upon these particulars, because the case which I have to state to you is of so simple a nature, and depending on so remarkable an occurrence, that to take up your time in commenting on all the constructive treasons, would be a waste of your indulgence; therefore, under the conviction that it cannot be disputed, or denied, that a party of the subjects of this country, who shall dare to arm, and present themselves so armed, to resist the military authority of this country, with a view to overturn the government of the country, is treason—I say, under the conviction that no person will dispute that to be the law, I shall now direct your attention to the facts of the case which I expect to prove, in order to convince you that this unfortunate individual has been guilty of the act to which I have alluded.

Before I do this, I would just make one observation, namely, that, while it is usual that the indictment should

specify a variety of overt acts, in support of the charge, it is not necessary that I should prove, to your satisfaction, *all* the overt acts. Mr Justice Foster says, in page 194, "In every indictment for this species of treason," that is, compassing the death of the King, "and indeed for levying war, or adhering to the King's enemies, an overt act must be alleged and proved. For the overt act is the charge to which the prisoner must apply his defence. But it is not necessary that the whole detail of the evidence intended to be given should be set forth; the common law never required this exactness, nor doth the statute of King William require it. It is sufficient that the charge be reduced to a reasonable certainty, so that the defendant may be apprised of the nature of it, and prepared to give an answer to it. And if divers overt acts are laid, and but one proved, it will be sufficient, and the verdict must be for the Crown; and, therefore, where divers overt acts are laid, and the indictment, in point of form, happeneth to be faulty with regard to some of them, the Court will not quash it for these defects; because that would deprive the Crown of the opportunity of proving the overt acts which are well laid." Therefore, Gentlemen, in the facts which I am to state, it is not necessary for me to shew particulars applicable to each of these nineteen overt acts; but if I shew, to your satisfaction, that there are one or more of these supported by the facts I am to detail, that is sufficient, in order to ask you for a conviction of the prisoner.

Gentlemen, in stating the facts of the case, it will not be necessary for me to go back far previous to the occurrences which took place upon the 5th of April last. It is, however, fit that I should notice, that betwixt the night of Saturday, the first of April, and Sunday morning, the second, there was posted up, all over the town of Glasgow, and in various parts of the adjoining country, an address to the inhabitants of the united kingdom, containing matters of the most treasonable nature,—an address which no doubt many of you have heard. It is quoted at length in the indictment, and a copy will be laid before you in evidence; it is long, and I will not go through the whole of it; but I shall quote one or two parts of it, as shewing the treason which this indictment

charges. It is stated to be, "An Address to the Inhabitants of Great Britain and Ireland;" and commences thus: "Friends and Countrymen, roused from that torpid state in which we have been sunk for so many years, we are at length compelled, from the extremity of our sufferings, and the contempt heaped upon our petitions for redress, to assert our rights at the hazard of our lives, and proclaim to the world the real motives which (if not misrepresented by designing men, would have united all ranks,) have reduced us to take up arms for the redress of our common grievances." It then goes on to detail the various reasons which have led these persons to this result; and then proceeds to call upon the soldiery to abjure their allegiance:—"Soldiers! shall you, countrymen, bound by the sacred obligation of an oath to defend your country and your King from enemies, whether foreign or domestic, plunge your bayonets into the bosoms of fathers and brothers, and at once sacrifice at the shrine of military despotism to the unrelenting orders of a cruel faction, those feelings which you hold in common with the rest of mankind?" It then directs them to turn their attentions to Spain; and after going on in the same strain, it proceeds thus:—"We earnestly request of all to desist from their labour from and after this day, the 1st of April, and attend wholly to the recovery of their rights, and consider it as the duty of every man not to recommence until he is in possession of those rights which distinguishes the freeman from the slave, viz. that of giving consent to the laws by which he is to be governed. We therefore recommend to the proprietors of public works, and all others, to stop the one, and shut up the other, until order is restored, as we will be accountable for no damages which may be sustained, and which, after this public intimation, they can have no claim to. And we hereby give notice to all those who shall be found carrying arms against those who intend to regenerate their country, and restore its inhabitants to their native dignity, we shall consider them as traitors to their country, and enemies to their King, and treat them as such. By order of the Committee

of Organization for forming a Provisional Government." Gentlemen, you will have an opportunity of considering the nature and terms of this extraordinary manifesto, exhibited in Great Britain by persons describing themselves "The Committee of Organization for forming a Provisional Government," and holding out a determination to take up arms against the constituted laws of the land, and calling on persons to give obedience to their orders—to call justices of the peace to assist them—and giving every possible direction that could lead to or excite insurrection and rebellion.

This was the manifesto exhibited in the town of Glasgow; and it is necessary I should connect the individual at the bar with this document, though I may first state the effect produced by its publication, namely, that though previous to that time the inhabitants of Glasgow were quietly employed in their occupations, and all the manufactories at work, yet the consequence of that manifesto was, that upon the Monday, the whole of the manufactories, with the exception of one or two, were stopped; and I believe there was hardly a weaver that did not shut up his house and remain idle for a considerable time. The population of that great city assembled in the streets, where they formed themselves into columns, and marched with the military step. The shops were closed, and business generally stopt. In short, Glasgow presented a scene which you will hear described in evidence, and which, having personally witnessed, I can safely say, was sufficient to excite serious alarm in the minds of every individual.

Gentlemen, it will be proved, that upon Sunday, the 2d of April, a magistrate belonging to that county and city, knowing that this address had been posted up in Glasgow, thought it his duty, as well became him, early in the morning to go abroad, and, if possible, to take means to remove this inflammatory production; and in taking that measure, you will, no doubt, think with me, that his conduct was highly praiseworthy. He accordingly went to a street in Glasgow, I believe part of Duke Street, where he found upwards of thirty persons assembled round a watch-box

where this address was posted up, one of the individuals being employed in reading aloud the terms of the address.

Gentlemen, Mr Hardie, the justice of the peace to whom I have alluded, immediately thought it his duty to attempt to take down this treasonable address, and accordingly he made an effort, but in doing so he was seized by this prisoner at your bar, who took him by the middle, and threw him into the street. Mr Hardie then stated, that he was a magistrate, that there might be no misunderstanding as to his character. In answer, they called on him to shew his authority, as if it could be supposed a magistrate carried the commission of the peace about with him, or could be required to produce it. Notwithstanding he thus declared he was a magistrate; and although he was known as such to many of the persons present, he was resisted by violence to that degree, that for his own personal safety he was obliged to leave the spot, the address remaining posted up as it was before. These circumstances seem very material in the present case, as connected with the foresaid address; they prove the prisoner's knowledge of the contents; perhaps more, for I apprehend that a person who resists the removal of such an address, is as accessary to its publication as the person who puts it up.

Now, Gentlemen, having thus commenced upon the Sunday with a knowledge of this address, the next place where we find this individual is, upon the evening of Tuesday, at a meeting of persons designing themselves radicals, at a place called Gadshill, in the neighbourhood of Glasgow; to this spot this individual repairs, according to his statement of it, about ten o'clock on the evening of Tuesday, the night in which it was generally believed there was to be a rising of the people all around the country. It will be proved to you further, Gentlemen, that this individual believed there was such a rising,—nay, that he understood there was a rising all over England; that England was up, and that the mail coaches were next morning to be stopped. These facts will be proved to you in a manner which will leave no dispute of their truth.

Now, under these impressions, this individual, according to his own statement, proceeds at ten o'clock at night to this meeting in the neighbourhood of Glasgow. What passed at that meeting, I believe will not appear in evidence before you; but after this meeting had been collected for two hours, at twelve o'clock at night a party of it, consisting of from thirty to forty, marched off, armed; I do not say all armed with regular arms, but all armed with guns or pikes, or other weapons; and in particular, this prisoner, Hardie, marched off at that time, and there is reason to believe he was the leader and conductor of that marching. This is the reason we have singled him out as the person to be first tried. He was armed with a musket, and the purpose of that marching will be explained by the prisoner's own words—it was to join others who were expected to come to Glasgow, in order by force of arms to take possession of that city, and thereby to do all in their power to overturn the government of the country.

Gentlemen, having thus marched off, the first place to which they repaired was a village of the name of Condorrat, in the county of Dumbarton; they arrived there, and met a great many other individuals, several of whom will be proved to be now at your bar; and having been so joined, they proceeded onward toward Falkirk, in order to join other parties, who, from the town of Camelon and its vicinity, they believed to be in arms, and with whom they were to return to Glasgow.

The next place we find them at, I think, in point of time, is Castlecary Bridge, about six o'clock in the morning of Wednesday, the 5th of April; they there stopped to breakfast, and had porter and bread, which was furnished to them by a person who will be a witness before you; and there, Gentlemen, it appears that the person who was the leader of this meeting proposed to the landlord to take a bill at six months, for payment of this breakfast, amounting in the whole to the sum of eight shillings; it appears that the landlord was not fond of this negociable security, and therefore was extremely anxious that he should receive cash

for the provisions that he had furnished them, and accordingly the money was borrowed, part of it from the individual now under accusation before you, and the landlord was glad to accept of seven-and-sixpence as his reckoning. It was insisted before that was paid, that the landlord should grant them a regular receipt, and accordingly it will be proved to you by him, that one of the party made out a receipt in the following extraordinary terms:—"A party called, and paid for porter and bread seven-and-sixpence." What the object of this extraordinary document was, I leave you to consider; whether repayment was intended to be claimed hereafter I do not know, but such was the fact. After leaving Condorrat, the party, it appears, divided into two divisions, one under the directions or command of another prisoner, who is now at your bar, of the name of Baird, and which went by the banks of the canal; while the other party, headed by the prisoner at the bar, proceeded by the highway, and soon after leaving that village, proceeded forcibly to take arms from various houses on the side of the highway; so as to arm themselves, for purposes which I shall hereafter state. But I should mention that while at Condorrat, the prisoner at your bar was procuring bullets and gunpowder for those arms, with which his party was then provided; it is material to keep that fact in view. At Condorrat, the first act was to procure bullets for those pieces they had, and gunpowder; still the greater number not having arms of that description, they proceeded to get arms, and they succeeded in procuring in one instance a musket, and I believe some other weapons.

This party then proceeded on by the high-road towards Camelon, and they were met by a gentleman of the Kilsyth troop of cavalry, who was returning to his duty, after an absence of a night. This individual was stopped by the party, who endeavoured to take his arms; but this he resisted, saying, they should not have his pistol, but they were welcome to the contents; and he was allowed to proceed, and did proceed, towards Kilsyth, where the King's troops were stationed.

After having met this gentleman, they met another individual of great importance in this case, namely, a private Hussar who was proceeding with dispatches from Stirling; and this person they also stopped and endeavoured to take possession of his arms. The circumstances connected with this will be fully detailed to you by the individual. These persons drew themselves up in battle array across the road under the direction of Hardie who arranged them, and who was one of the individuals who laid hold of this man by his bridle, and endeavoured to take from him his arms. The Hussar, however, contrived to convince them that his political principles were favourable to theirs, and prevailed on them not to take his arms; and they put into his possession a copy of that treasonable address which was posted all over Glasgow. This paper was given to the soldier in the presence of Hardie, and it was taken from among a great number of similar papers which were exhibited to this individual. Thus, in a second instance, did the prisoner at your bar connect himself with that treasonable document.

After having thus met this soldier, they proceeded on towards Camelon, and there it was found that their expectations, in regard to there being a great number of persons assembled to join them, were not likely to be realized, and that the people in that quarter were disposed to remain quietly at home. Thus disappointed, it appears that this party on the high road having joined the other party which went by the bank of the canal, they consulted together, and considering that it would be in vain to go further, they thought it wise to repair to an adjoining common, and remain there till dark, when they should again return to Glasgow. There, accordingly, they went. The common is named Bonnymuir, and is situated about four miles from Falkirk.

Gentlemen, the Hussar who had been stopped by this party, immediately proceeded to the quarters of his troop, then stationed at Kilsyth, and communicated the particulars of what had occurred to him on the road, and of this armed party having proceeded eastwards. Having mentioned this to the officer of the 10th Hussars, then sta-

tioned at Kilsyth, means were immediately adopted for pursuit. It so happened, that that troop of the 10th Hussars had marched upon the Tuesday from Perth to Stirling, being a distance, I believe, of five or six and thirty miles; and after having put up their horses at Stirling to remain there all night, an order came for their still farther advancing, and in the course of the morning of the Wednesday they had to proceed sixteen miles farther; so that they had performed a very long and forced march, and, therefore, it will not appear surprising that their horses were not well calculated to proceed on a farther enterprize. This was supplied in a manner highly creditable to the other soldiers, namely, this troop of Kilsyth cavalry, who agreed that a part of their body should go on this enterprize, and that the party of the 10th Hussars who required to be mounted, should have the use of a part of the yeomanry horses. To any individual who knows the value such men set on their horses, this was no slight proof of the just and right feelings of these brave yeomen. The party was thus composed partly of troops of the line, and partly of yeomanry, and it was commanded by an officer of the 10th Hussars, whom you will see, and whose conduct on that occasion, I am confident, will appear to have been such as will leave the most favourable impression upon the mind of every individual who shall hear his evidence. Under the command of this individual, assisted by the officers of the yeomanry, this party set forward in pursuit of these armed individuals, and having been informed that they had proceeded to the moor I have mentioned, they followed them there. It appears that the soldiers were not discovered for a considerable period, but when they were observed, they were received by the people on the moor with a cheer. It will be proved, that on the nearer approach of the soldiers, the party, consisting of thirty or forty, rose at once and gave three cheers, and ran down the hill towards a wall there situated, about five feet in height, across the line in which the King's troops were then advancing; and having placed themselves in line behind that wall, so soon as the King's troops came within reach of them, they fired on them, before any at-

tempt of the kind had been made by the troops. These troops marched up, and the commanding officer endeavoured to prevail on the insurgents to surrender while he was yet on the opposite side of the wall, but all remonstrance was in vain; and though he exposed himself in a manner hardly prudent, and was in danger of being shot on the spot, and was wounded severely, yet his advice and efforts were entirely thrown away; and it was only by discovering that there was an opening in the wall that they were able to approach these persons, and by making a sort of irregular charge, to effectuate the defeat and discomfiture of this body. It did not, however, end without those infatuated persons making every possible resistance, by firing at the troops, and using the pikes; and among those thus engaged it will be proved that the unhappy individual at your bar was most conspicuously active. These individuals were at last overpowered by the cavalry, and nineteen of them were taken prisoners. One of them was so much wounded, that he was left on the field, and afterwards escaped; but the other eighteen were taken prisoners by the soldiers, and marched to the castle of Stirling, and have been kept in custody from that time to the present, so that there cannot be a doubt of those being the self-same individuals who were engaged in this gross and traitorous outrage, which I have now taken the liberty of detailing to you.

Gentlemen, I omitted to notice, that along with these individuals there were taken a quantity of arms—the arms with which they were provided. There were taken five muskets, two pistols, sixteen pikes, one hay-fork, one shaft, and a bag of ammunition, containing a quantity of ball cartridges. It will be proved to you, that most of the prisoners were provided with ball cartridges; that their pieces were loaded, and that they used them when so loaded; it will be proved that the serjeant and various others were wounded by the shot fired at them, and one horse was killed and others wounded by shot; and when the muskets were taken to Stirling and drawn, several had balls in them, besides this bag of ammunition, to be used in case of any deficiency.

Gentlemen, having stated these things to you, I apprehend that, without any commentary, you will be completely satisfied that this case, if proved—because that remains yet to be done—does amount to an act of levying war against the King, for which I am entitled to ask a verdict at your hands against the prisoner. That there was a levying of war, no man can doubt; the troops were attacked; and though the party failed, it matters not: if we were to judge in such a question by the adequacy of the means, it is impossible to say in what case treason could be proved. Every one must be satisfied that no means that could have been raised at that time, could have been adequate to such an end. If the whole inhabitants of Glasgow and the four surrounding counties had all risen to a man, my opinion is, that the true valour and loyalty of Scotland is such, that every one of them would have instantly been put down, and the ringleaders brought to punishment for the offence. I say, that no means that could be devised would have been adequate to accomplish the end; but you are not to inquire into these particulars—you will look to the views and intent of the individuals. These persons had a most mistaken view of their means, but that cannot benefit them in the present case: they believed the whole country was in arms; they went out under the conviction of victory, and that their means were sufficient; and they attacked the troops under the belief that they were in condition to accomplish the object they had in view. I therefore submit to your sound judgment, that there was here a levying war, and that the intent was one connected with the overthrow of the government of the country, and of no private nature. If a different object shall be stated, it will be for the other side to prove it, and for them to shew for what purpose these persons came twenty miles in the night, and then engaged with a party of cavalry they never saw before. That the real object in view was the public purpose which I have stated to you, I believe and trust I shall be able to prove, not only by the acts of these persons, but by their own acknowledgments. For there will be exhibited in evidence a declaration of this individual himself; not one

declaration, indeed, but three successive declarations, taken before three different magistrates, and in one and all of which he acknowledges that he was in arms; that he resisted the King's troops; and that his object in so doing was to overturn the government of the country. He thus excludes himself from the only plea that could possibly now avail him.

With these observations, Gentlemen, I leave this case in your hands. If I have erred in stating any thing wrong in point of law, it will be rectified by those who are alone competent to direct you on this occasion. It is neither my statement nor that of my learned friend that ought to influence you. You will look at this case, painful as it is, and do your duty. The defence will be maintained by my learned friend, with the splendid talent which he possesses; and you will hear from the Bench all the law that the Supreme Courts of this country can furnish. You will weigh, coolly and deliberately, the evidence to be laid before you, and return that verdict which the evidence will warrant; and whether it is a verdict of acquittal or of condemnation, as I am confident it will be satisfactory to the country, so it will be perfectly satisfactory to me, who, in bringing this case fully and fairly before an intelligent and impartial Jury, have done all, and nothing more than my duty required.

EVIDENCE FOR THE CROWN.

JOHN RENNIE, residing at Smithyhill, in the Parish of Kilsyth, and County of Stirling, Cattle-dealer—*sworn.*

Examined by Mr Solicitor-General.

Q. Are you a private in the Kilsyth troop of Yeomanry?

A. Yes.

Q. Were you so in the beginning of April last?

A. Yes.

Q. Do you recollect having gone along with that troop to a place called Bonnymuir?

A. Yes.

Q. On what day was that?

A. On the 5th of April, I think.

Q. Will you state what took place when you went there along with your troop?

A. We went up there—there was a number of men there on the back of the dike; and before we went within the distance, they commenced firing, about an hundred yards or near.

Q. The men you speak of came up close to the other side of that dike?

A. Yes.

Q. And they then commenced firing?

A. Yes, they then commenced firing.

Q. Look at the man at the bar—was he among the number of people there?

A. Yes.

Q. How was he employed—what was he doing?

A. He had a pike, I think, to the best of my judgment.

Q. Was he active in using it?

A. I am sure I could not say as to that.

Q. Look among the other men that you see at the bar there—were any of the other men there?

A. I saw this fellow here—this one here (*Baird*)—and this one (*Murchie*)—here is another—this fellow here——(*M'Culloch.*)

Lord President. Do you recognise any more?

Mr Serjeant Hullock. It is not material, my Lord.

Lord President. No: there are none of the rest at present upon their trials.

Mr Solicitor-General.—How were they armed—what arms had they?

A. This fellow here (*Baird*) had a short pistol—this fellow (*Murchie*) had a gun.

Q. Had the rest pikes, or what?

A. This fellow who is here had a pike (*M'Culloch.*)

Q. What happened next after they fired upon you from the other side of the dike—did you advance?

A. Yes, we advanced to the dike.

Q. Did you go over the dike?

A. Through a *slap* in the end of the dike, where it was broke down.

Q. Then, having got round upon them, were they taken prisoners?

A. I saw Baird on the spot, and some were taken at some distance, and brought back.

Lord President.—You took Baird on the spot?

A. Yes, I saw him on the spot.

Mr Solicitor-General.—Did you take Baird on the spot?

A. No, I saw him upon the spot.

Q. Was there any ammunition found—any bullets or cartridges?

A. I cannot say I am sure.

Q. Did you see them searched?

A. No; I was not there at the searching of them.

Q. Did you accompany them afterwards?

A. Yes.

Q. Where?

A. To Stirling.

Q. You saw them taken to Stirling Castle?

A. Yes.

Q. Was there any body wounded?

A. Yes, there were three or four men wounded.

Q. Of the troop?

A. No: none of our troop was wounded, that I know of.

Q. Were any of your horses wounded?

A. Yes, there was one killed, and my own horse was wounded too.

Lord Chief-Commissioner Adam.—What with?

A. With slug, I think.

Mr Solicitor-General.—Was there a party of Hussars along with you?

A. Yes.

Q. Were any of those wounded?

A. One, I think, that I know of.

Lord President. What regiment of Hussars was it?

A. The 10th.

Mr Solicitor-General.—Do you know in what county Bonnymuir is?

A. In Stirling.

Lord President.—Was the spot where you met them, where the action took place, in Stirlingshire?

A. Yes.

Lord Advocate. Do you know what parish it was in?

A. In the parish of Falkirk.

Cross-examined by Mr Jeffrey.

Q. You went to look for these men, did you?

A. I did not know where I was going.

Q. Had you gone off the road before you saw them?

A. Yes, we left the turnpike road.

Lord President.—You say these people were taken prisoners—after you passed this *slap* in the dike, did they make any further resistance before they were taken prisoners?

A. Yes, some of them did.

Q. Do you remember how many shots, or about how many shots, were fired before they were surrounded?

A. I could not say to the number of shots that were fired.

Q. More than one?

A. Yes, I am certain there were more than one.

Q. Those two horses that belonged to your party were wounded with shot?

A. I could not say how the other horse was wounded.

Q. Your own was wounded with slug?

A. Yes.

Lord President.—Prisoner, have you any question to ask this witness?

Hardie.—None.

JAMES HARDIE, Esq. residing in Glasgow, one of His Majesty's Justices of the Peace for the County of Lanark—*sworn.*

Examined by Mr Serjeant Hullock.

Q. Where do you live?

A. I live in Duke Street, Glasgow.

Q. Are you a Magistrate for the County of Lanark?

A. I am.

Q. How long have you been so?

A. About three years.

Q. Have you been an acting magistrate, during that time, for the county?

A. I have.

Q. Do you remember being in Duke Street on the morning of Sunday the 2d of April last?

A. I do.

Q. About what hour might that be?

A. It was from eight to half-past eight, I think.

Q. Was your attention attracted by any thing, and what, whilst you were in that street at the time you allude to?

A. It was, by a crowd of people on the south side of the street.

Q. Was the crowd walking or standing still?

A. Standing still.

Q. Did you go towards the crowd?

A. I did.

Q. Look at the person at the bar—did you ever see him before to-day?

A. I did.

Q. Did you see him at any time in the course of the Sunday morning of which we are now speaking?

A. I did.

Q. Where first?

A. Amongst that crowd.

Q. When you went up to the crowd, what were they doing, or any of them doing?

A. They were all looking at a placard that was pasted upon a watchman's box.

Q. Were any of them, as far as you know, reading that placard?

A. There was one man reading it aloud.

Q. Was he reading it sufficiently aloud to enable you and the rest of the party to hear what he was reading?

A. Perfectly.

Q. Did you hear him read any part of that placard which was so pasted up?

A. I did.

Q. Were you in a position, at the time you so heard him read it, to see whether he read it faithfully or not?

A. Yes.

Q. Did you follow him at the time that he was reading it?—did you read it yourself whilst he was reading it aloud?

A. I did.

Q. Was the person at the bar, at that time in a situation to hear as well as you what the man read?

A. Yes.

Q. Did you upon that occasion do any thing, or attempt to do any thing?

A. I did—I pressed through the crowd, for the purpose of taking it down.

Q. Did you accomplish your object?

A. No.

Q. Why not?

A. I was prevented by the prisoner at the bar, and some four or five others.

Q. In what way were you prevented by the person at the bar—how did he interfere?

A. He seized me, and threw me off the pavement—hustled me off the stones, would be a better expression than that.

Q. Did he come in contact with your person?

A. He did.

Q. Describe the manner.

A. He took me by the collar.

Q. Did he seize you with his hands?

A. He did.

Q. On one side, or on both sides of the collar?

A. I am not exactly certain,—of one side I am sure.

Q. How many other persons joined him?

A. There might be four or five.

Q. Did they remove you from the pavement?

A. Yes.

Q. Did you state any thing to them what you wanted to do? or did you say any thing upon this occasion? or did they say any thing to you? and what?

A. After I was thrown off the pavement, I said it was a most improper address to remain there, and insisted on taking it down, and told them I was a magistrate.

Q. Was this after the reading of which you spoke at first?

A. It was.

Q. Then your observation occurred after the man had read a certain portion of that address?

A. It did.

Q. Could the nature of that address be ascertained or learnt from the parts which he so read?

A. I do not exactly understand the meaning of the question.

Lord President.—Did the man read enough of the proclamation that the by-standers could understand generally the purpose of it?

A. Perfectly.

Mr Serjeant Hullock.—What made him finish reading?—had he got to the conclusion?

A. I did not permit him to read to the end of it.

Q. Then, by your interposing in the way you have been describing, he finished reading?

A. Yes.

Q. When you made the observation which you have just now stated you made about its being an improper paper to be posted up, do you recollect what was said to you by any one, and by whom?

A. The prisoner at the bar, when I said I was a magistrate, said, "Where is your authority?"

Q. Probably you would not have it about you?

A. No. I told him there must be plenty of people in the crowd there who knew I was a magistrate.

. Did you look about to endeavour to recognise any person who was acquainted with you?

A. I did.

Q. Were you successful?

A. No.

Q. Did he say any thing to you upon your observing that this was an improper paper to remain in that position?

A. He questioned me about my authority, which I had nothing to shew for; and he told me, that before he would permit me to take down that paper, he would part with the last drop of his blood.

Q. Was that whilst or after he had hustled you from the pavement?

A. It was after I had been twice hustled from the pavement.

Q. Did you, after you were hustled from the pavement in the way you have just now described, make another effort to get to the watch-box?

A. I did.

Q. Was that more successful than the first?

A. No, not more.

Q. Why not?

A. I had not personally strength enough.

Q. State to us what was done by him or by others?

A. I was seized by him in the same way, or rather in another way,—he clasped both my arms within his, and hustled me off the pavement.

Q. Did he come behind you?

A. Before me, I think.

Q. Were you prevented the second time in the way you have mentioned by the intervention of the prisoner and others?

A. I was.

Q. Did you make any other effort?

A. No.

Q. When was it that he used the words which you have mentioned?

A. After the second attempt.

Q. Would you have taken down that paper but for the prevention or interruption which you received from the prisoner, and the other persons concerned with him?

A. Most unquestionably.

Q. Did you leave that spot in consequence of finding it impracticable for you to do so?

A. I did.

Q. Do you remember any other conversation, or any thing more that was said by the prisoner, or by any other person, at that time in that party?

A. No, I do not.

Q. Did you ever see him afterwards that you recollect?

A. I have seen him twice since.

Q. Perhaps you mean at Stirling?

A. Yes.

Q. Since his confinement?

A. Yes.

Q. Did you see him before that, or that day?

A. I never saw him before or since.

Q. Have you any doubt of that being the person of whom you have been speaking?

A. Not the least.

Q. Did I understand you rightly, when I understood you to say, that that person asked you to shew your authority as a magistrate, or was it another person in the crowd?

A. It was this person, (Hardie.)

Q. That was in reply to your assertion that you were a magistrate?

A. Yes.

Q. Did you read the whole of that address?

A. I did not.

Q. You say, that a certain portion of that address was read aloud by the person who was reading at the time you approached the crowd?

A. Yes.

Q. You read a certain part of it yourself, because you followed the man who was reading?

A. I did.

Q. Did you see in the course of that day any similar address?

A. In the course of two or three minutes afterwards I saw another.

Q. Was that also pasted up against a wall?

A. It was pasted up against a well—a pump-well.

Q. What height was it up from the ground?

A. About four or five feet.

Q. Did you take that down?

A. I did.

Q. Did you read it before you did so, or afterwards?

A. I read it afterwards.

Q. You are quite sure that what you took down from the well you afterwards read?

A. Yes.

Q. Have you that document about you now?

A. I have.

Q. I do not call for it at present,—that you have had it in your possesion ever since?

A. Ever since.

Q. Do you believe that the address, part of which you have read in the presence and hearing of the prisoner, is a copy of that address that you have about you now?

A. I do.

Q. Does your recollection furnish you so far as to enable you to tell us what part of the address was read in his hearing?

A It was the address to the soldiers.

Q. You mean that part of the address?

A. That part of the radical address.

Q. That part which begins by the word "Soldiers?"

A. It is just a paragraph to the soldiers altogether.

Q. Do you remember hearing that paragraph read by the person in the presence and hearing of that man at the bar?

A. Yes, I do.

Lord President.—Both these copies contained that paragraph?

A. Both.

Mr Serjeant Hullock.—Then of whatever nature or description that paragraph may happen to be, of that paragraph he must have been aware, because he heard it read?

A. Perfectly.

Q. Produce it if you please, and let us see whether it contains that passage.

(*The witness produced it.*)

Q. Just state to us the part of the address which you can, upon your memory, and upon your oath, state was read by the person to whom you allude, at the time you went up to that party of which that man was one.

A. "Soldiers! shall you, countrymen, bound by the sacred obligation of an oath to defend your country and your King from enemies, whether foreign or domestic, plunge your bayonets into the bosoms of fathers and brothers, and at once sacrifice at the shrine of military despotism to the unrelenting orders of a cruel faction those feelings which you hold in common with the rest of mankind?—Soldiers! turn your eyes toward Spain, and there behold the happy effects resulting from the union of soldiers and citizens.—

Look to that quarter, and there behold the yoke of hated despotism broke by the unanimous wish of the people and the soldiery, happily accomplished without bloodshed: and shall you, who taught those soldiers to fight the battles of liberty, refuse to fight those of your own country? forbid it, Heaven! Come forward, then, at once, and free your country and your King from the power of those that have held them too, too long in thraldom."

Q. Did you stop him at that time?

A. I pressed through the crowd.

Q. Was the stopping, at whatever period it was, the result of your exertion to get towards the place to take it down?

A. It was.

Q. Are you quite sure that that portion of the address against the watch-box was read in the way, and at the time you have mentioned?

A. It was.

Q. Is this the address which you got from the well?

A. It is.

Q. When did this fracture take place?

A. Some person had attempted, I imagine, to tear it off before.

Q. This was all you got from the place?

A. Yes.

Lord President.—It appeared to be a little torn when you saw it?

A. One fragment was torn off the lower corner.

Mr Serjeant Hullock.—Do you remember reading the date of the other address against the watch-box?

A. No, I cannot say that I did.

Q. Did you see the title of that which was against the watch-box?

A. Yes, I did.

Q. Was it the same title as that?

A. Yes.

Q. And the paragraph you have read was the same paragraph as was contained in the other, and which was read at this time amongst those persons?

A. It was.

Q. You reside at Glasgow?

A. I reside at Glasgow.

Q. You resided there both before and after this date?

A. I did.

Q. Was there any difference in the appearance of the place on the Saturday, the day before this address was seen by you, and on the Monday, the day after?

A. A very great deal.

Q. Have the goodness to describe in what respect?

A. The streets were crowded in a very tumultuous manner.

Q. When?

A. On the Monday.

Q. Through the whole of Monday?

A. Through the whole of Monday.

Q. Did you happen to be at Glasgow on the Tuesday?

A. I was at Glasgow on the Tuesday.

Q. Did the same crowded appearance continue during the whole of Tuesday?

A. So much as I saw of it, but I went to the barracks and remained there all day.

Q. Did you see it afterwards?

A. On Tuesday night, after my return.

Q. And on Wednesday?

A. And on Wednesday.

Q. Describe the state the streets were in at that time—were they still crowded?

A. Yes, very much crowded, and bands of men walking in procession through them.

Q. Describe the sort of crowd, and the sort of processions, which you are referring to?

A. Men walking in military array.

Q. Were they soldiers?

A. No—working people.

Q. What do you mean by military array?

A. Keeping step, and walking in regular rows.

Q. Were they in ranks?

A. In ranks.

Q. Of what number might any one of those bodies, who were marching in military array, be composed?

A. One of them about sixty, as near as I could guess?

Q. About sixty individuals?

A. Sixty individuals.

Q. Were there several of that description of party?

A. Several.

Q. Were the crowds which you have mentioned, and the persons marching in military array, of the class of working people, or of what description?

A. Working people.

Q. Do you know how long that state and condition of things remained at Glasgow?

A. It continued about the whole of that week.

Q. Did the streets exhibit in any part of the preceding week appearances of that sort?

A. No.

Q. Then, was the first day upon which you observed these marchings and these crowds subsequently to the time that you saw this address posted up upon the watch-box?

A. It was.

Q. Did you before the morning of the 2d of April see any address of that sort in any place, either posted up or any where else?

A. Yes.

Q. Before the Sunday morning?

A. No. I beg your pardon, I thought you said after.

Q. You say that during the former week no appearances of this sort were exhibited in the streets of Glasgow?

A. No.

Q. Was the first address that you saw the address that you saw when that man was there?

A. It was.

Q. Had you before that time then seen any address of that sort any where?

A. No.

Q. You say that the streets continued in that state during the remaining part of that week?

A Yes; not nearly so much so after the Wednesday.

Q. Were you in Glasgow on the Wednesday?

A. I was.

Q. Did you hear of the skirmish on Bonnymuir in the course of that day?

A. I cannot say whether it was that day.

Q. A rumour of that sort did reach your ears?

A. It did.

Q. But you do not know whether it was on the Wednesday or the Thursday, do you?

A. No.

Q. During the remainder of the week these crowds rather diminished?

A. They did.

Q. I ask you whether any other person besides Andrew Hardie was active in preventing your taking it down, or appeared to be active in taking care of that paper?

A. There was.

Q. How many of them might there be?

A. Four or five besides himself.

Q. Have the goodness to state to the Court and the Jury, in what way they exerted themselves to prevent your getting to the watch-box to take it down?

A. In pushing in between me and the box.

Q. Did they appear to do that on purpose to prevent your getting to the box?

A. They did.

Q. Did any other person say any thing except Hardie?

A. I do not recollect,—he was the most prominent individual of the party.

Q. Did he, in your judgment, appear to take the most active share in the opposition to you?

A. He did.

Cross-examined by Mr Jeffrey.

Q. You are a justice of the peace for Lanarkshire, I understand?

A. I am.

Q. Not a magistrate of the city of Glasgow?

A. Not of the city of Glasgow.

Q. You said you were a magistrate in general terms to the persons who obstructed you?

A. I did.

Q. Does it consist with your knowledge, that in Glasgow the word magistrate is generally applied to the city magistrates?

A. It does.

Q. Do they wear any visible badge in general?

A. They do.

Q. A gold chain in general, do not they?

A. They do.

Q. Do you recollect using any angry or reproachful expressions to the party at the time, other than those you have mentioned?

A. No, I do not.

Q. How long time might there be this little squabble about the watch-box?

A. Two or three minutes?

Q. Did you observe, on leaving the party, whether the reading was resumed again?

A. I did not,—I cannot answer that.

Lord President.—Andrew Hardie, have you any questions to ask him? suggest them to your counsel if you have.

Prisoner.—No, my Lord.

JOHN STIRLING, Surgeon, residing in High-Street in Glasgow—*sworn.*

Examined by Mr Drummond.

Q. Do you know the prisoner at the bar?

A. Yes, I have seen him before.

Q. Did you see him upon the morning of Sunday, the 2d of April, in Duke Street, Glasgow?

A. Yes.

Q. What was he doing at the time you saw him?

A. At the time that I first observed, I believe Mr Har-

die the magistrate was in the act of taking down one of those papers, and the man at the bar stepped forward and prevented him from doing so.

Q. What paper?

A. An address to the inhabitants of Great Britain and Ireland.

Q. Mr Hardie attempted to take the paper himself?

A. Mr Hardie attempted to take it down. It was pasted on the police-box; and he first of all attempted to snatch it down with his hand, and did not succeed; and afterwards tried to take it down with the point of his umbrella, and he was prevented by the prisoner.

Q. What did the prisoner do?

A. He caught hold of him by the waist, and pushed him off the pavement.

Q. Were there other people round at the time assisting the prisoner?

A. Yes; there might be from twenty to thirty more.

Q. And did they assist the prisoner in preventing Mr Hardie taking it down.

A. No; none of them assisted him,—some of them appeared friendly.

Q. Did any of them assist the prisoner in pushing back Mr Hardie from the paper?

A. No, none of them.

Q. Did they assist Mr Hardie then?

A. No, they did not either.

Q. Some appeared friendly?

A. Yes, a number appeared friendly to the prisoner.—One spoke on his behalf.

Q. What did he say?

A. I do not recollect exactly the expression which the individual used.

Q. What was the nature of it, as far as you recollect?

A. I suppose, that there was no ill contained in the paper.

Q. Do you remember what Mr Hardie said to that?

A. He told the prisoner that it was a treasonable paper, and ought to be taken down.

Q. Was that before the prisoner shoved him off, or afterwards?

A. That was after.

Q. Then Mr Hardie had come back again?

A. No; he was not pushed any distance off,—he made a second attempt to take it down, and the prisoner said he would not allow him to take it down,—he dared him to take it down.

Q. Do you remember what the prisoner said particularly?

A. He wanted to know for what reason he wanted it down, and what authority he had for doing it: and Mr Hardie replied to that question, that he was a magistrate; and that the paper contained seditious matter.

Q. Did you see the prisoner after that?

A. Yes, I saw him frequently on the Monday; and I believe I saw him on the Sunday afternoon, and on the Tuesday morning;—I saw him frequently on the Monday.

Q. And on the Sunday afternoon, and Tuesday morning?

A. Yes.

Q. Where did you see him upon the Monday?

A. I saw him at the east end of Rotten-row Street, Glasgow—at the head of Havanah Street—at the corner of Duke Street, on both sides, and at several other places.

Q. Were there people with him at those times?

A. Yes.

Q. What were they doing?

A. They appeared to be quite idle, talking to one another.

Q. Was there a person of the name of Anderson there the first time you saw him?

A. Yes; a Mr James Anderson, an Excise officer.

Q. You saw him here to-day?

A. I did.

Q. He was at the watch-box at the time Mr Hardie was endeavouring to get the paper down?

A. Yes.

Q. You saw him there?

A. Yes; I saw him there at the time, and I saw him immediately before he went there.

Q. Did you observe any thing pass between Mr Anderson and the prisoner at the bar?

A. Yes; I observed the prisoner told Mr Anderson that he knew his principles well, and would mark him afterwards.

Q. What led to that observation? Had Anderson said any thing to him before? or what intercourse was there previously between them?

A. Mr Hardie had just gone away then, and I was following him, and I heard the prisoner speaking rather loud with Mr Anderson, and I heard that expression of the prisoner, and he accused me in the same manner—that he knew my principles likewise, and that he had brought Mr Hardie there for the purpose of taking it down.

Lord President.—He applied that to you too?

A. He applied that to me after returning.

Mr Drummond.—From the observation you had, did you consider that Mr Hardie was prevented taking down the paper?

A. Yes; I certainly considered he was prevented taking it down.

Lord President.—Have you any questions to suggest to your Counsel?

Prisoner.—No, my lord.

HUGH M'PHUNN, Clerk to G. and R. Dennistoun, and Co. merchants, Glasgow, residing in Duke Street in Glasgow—*sworn.*

Examined by Mr Hope.

Q. Where do you live.

A. I live at the corner of Duke Street, in the High Street.

Q. In what town?

A. In Glasgow.

Q. Were you in Glasgow in the beginning of last April, upon the first and second of April?

A. I was.

Q. Had you occasion to be out in the street in the morning of the second of April, on the Sunday?

A. I was out in the morning.

Q. Was that upon the Sunday?

A. Yes; upon Sunday morning. The second of April was Sunday.

Q. Are you acquainted with Mr Hardie, one of the Justices of the Peace of the county of Lanark?

A. I am.

Q. Did you see him upon that Sunday morning?

A. I did.

Q. In Duke Street?

A. In Duke Street.

Q. Where was he when you saw him?

A. He was exactly opposite to my window. I was looking over the window, and I saw Mr Hardie.

Q. Were there other people upon the street, at the time?

A. There were.

Q. What were they doing?

A. They were reading a paper that was upon a sentry box.

Q. How many people might there be?

A. From a dozen and a half to two dozen. I could not say exactly.

Q. Was any person reading it to the others aloud, or did they appear all to be reading it together?

A. There was one man reading it aloud at one time.

Q. Did you go towards the spot? did you join this crowd?

A. Not at the moment.

Q. Did you shortly afterwards?

A. I did in a few minutes afterwards.

Q. Did you see the prisoner at the bar there?

A. I did.

Q. Did you see Mr Hardie, the magistrate, attempt to do any thing at that time, and what?

A. He attempted to take down the paper.

Q. What followed?

A. There was a person took Mr Hardie by the breast, and would not allow him to take it down.

Q. Do you know who that person was?

A. Yes.

Q. Who was it?

A. The prisoner at the bar. He took him by the breast, and would not allow him to take it down, and offered to strike him.

Q. Did you hear any observations made either by Mr Hardie the magistrate, or by the prisoner, and what were they?

A. I did not; I was then looking over the window.

Q. Did you go down to the street after that?

A. I did.

Q. Immediately after you saw that?

A. Mr Hardie was away before I went out.

Q. When you went down, what took place then?

A. There were a number of people there, and Mr Hardie returned in a few minutes after that.

Q. In a few minutes?

A. Perhaps in a quarter of an hour, or half an hour; I cannot say exactly the time.

Q. What took place then?

A. Nothing at all; the prisoner at the bar was away before that.

Q. After you left your house, and went down to this crowd, did you hear any observations made by the prisoner at the bar?

A. The prisoner was away when I went down.

Lord President.—Andrew Hardie, have you any questions to suggest?

Prisoner.—No, my lord.

ARCHIBALD BUCHANNAN, change-keeper of, and residing at Castlecarry Bridge, parish of Falkirk—*sworn.*

Examined by the Lord Advocate.

Q. You are a change-keeper at Castlecarry Bridge, are not you?

A. Yes.

Q. Where is that situated?

A. On the banks of the great canal.

Q. Upon the road from Glasgow to Falkirk, is it?

A. Yes.

Q. What side of the canal is your house situate upon?

A. The north side.

Q. Do you remember any persons coming to your house on a Wednesday, in the beginning of April, in the morning?

A. Yes.

Q. At what time?

A. Half-past six o'clock.

Q. Did you see where they came from?

A. I think they came across the bridge.

Q. Where did you see them first.

A. They came to the door.

Q. Were you in the house at the time?

A. Yes.

Q. Did any of them knock at the door?

A. They tapped gently at the door.

Q. Did you answer it?

A. I told them to come in; I did not rise off my seat.

Q. How many came in did you see?

A. I could not say particularly; I never counted them.

Q. About how many?

A. I dare say there would be about twenty-four, or thereby; I could not say particularly.

Q. Had they arms, or any thing with them?

A. They had long sticks.

Q. Any muskets?

A. Some had; but I could not say particularly.

Q. Had they all some weapon or other?

A. Yes.

Q. Were they merely long sticks, or had they pikes at the end of them?

A. They had iron in the end of them.

Q. What did they ask for, or what did they say about themselves?

A. They asked if we had any porter and bread, which they got.

Q. How much did they get?

A. A dozen of porter, and a dozen of bread.

Q. Is that loaves you mean?

A. Twopenny loaves.

Q. How long were they at your house altogether.

A. Much about half an hour, or thereabouts. I could not say particularly the time.

Q. Did any of them ask what was to pay?

A. Yes; one little man came and asked what was to pay.

Q. Should you know that man again?

A. I could not say particularly.

Q. Look and see if you see him among those men?

A. This was him. (*Baird.*)

Q. What did you tell him?

A. I said eight shillings.

Q. Did they give it you?

A. They gave me 7s. 6d.

Q. Did he give you that at first, or did he propose that you should take any thing else instead?

A. No, nothing. He gave me 7s. 6d. first.

Q. Did he talk any thing about a note.

A. No; I do not recollect taking it.

Q. Had this man the money himself?

A. Yes; he gave me the money out of his pocket.

Q. He did not get it from any of his companions?

A. Not that I know of.

Q. Did they ask any receipt for this?

A. Yes.

Q. Did you give it?

A. Yes.

Q. Should you know it again?

A. Yes.

Q. Read that, (*handing a paper to the witness;*) is this the paper that you gave?

A. Yes, I think it is, with my own name to it, and in my own hand writing.

Q. Who did you give this to?

A. To the man that I got the money from.

Q. To that man next you? (*Baird.*)

A Yes.

Q. Read it yourself, and see what you meant by it?

A. "The party called, and paid for porter and bread, 7s. 6d. by cash; signed, *Archd. Buchanan.*"

Q. Is that a receipt of your own making out, or were you desired to make it out in those terms?

A. I was desired to make it out so.

Q. By the same man?

A. Yes.

Q. The same man dictated it to you?

A. Yes.

Q. Was that the only receipt that was made out?

A. Yes.

Q. Did not you make out a receipt yourself?

A. I was going to make out one.

Q. Why were not you allowed?

A. It was not in the way he wanted it.

Q. Was it written, that he saw it?

A. I just began two or three words.

Q. What words had you written?

A. I think it was "Received from."

Q. And he said that would not do, and dictated that?

A. Yes.

Q. Did they go away after this?

A. Yes.

Q. Did you observe which way they went, or whether they went altogether, or what "became of them?"

A. I cannot say particularly, for I did not go to the door with them.

Q. Did you not look after what way they went at all?

A. No—I just went to the window.

Q. Did you see through the window?

A. No.

Q. Could you say whether they went towards Falkirk or towards Glasgow?

A. They did not cross the bridge.

Q. Did you know any of the party besides that man that you mentioned?

A. No, I could not say.

Q. Look at them again, and tell me whether you saw any of them before.

A. I cannot say.

Q. You do not mean to say you have examined those men?

A. No, I could not say.

Lord President.—Andrew Hardie, have you any questions to put to the witness?

Prisoner.—No, my Lord.

ALEXANDER ROBERTSON, of and residing at Damhead, in the Parish of Falkirk—*sworn.*

Examined by Mr Serjeant Hullock.

Q. You live at Damhead, I understand?

A. Yes.

Q. In the parish of Falkirk?

A. Yes.

Q. Do you remember any thing happening on the morning of the 5th of April last, when you opene dyour window-shutters?

A. Yes.

Q. About what time might that be?

A. I cannot say the exact time, but I think it was about eight o'clock.

Q. Upon that occasion did you see any number of men?

A. Yes, I see'd people walking in military array along the north bank of the Great Canal, going to the eastward.

Q. How far might that be from your house?

A. It might be about four hundred yards.

Q. Was it near enough to enable you to form an opinion whether they had any thing with them—arms or long sticks?

A. Yes; they had long sticks, in a slanting direction over their shoulders.

Q. What sort of sticks were they?

A. I could not exactly say; they were appearing to be what you call those pikes.

Q. They had like bayonets probably at the ends of them?

A. Yes.

Q. Had they all of them pikes?

A. I could not say exactly, but the greater part had.

Q. Did they march in order?

A. Yes, they were marching two men deep, according to the best of my judgment.

Q. Did they preserve any step?

A. Yes, I think they were keeping step.

Q. You cannot say exactly the number, but you can give us a guess?

A. I think about four-and-thirty.

Lord President.—Did you see any guns?

A. Yes, after they turned to go up to Bonnymuir, I saw they were hanging on their arms.

Mr Serjeant Hullock.—Did you pursue them with your eye?

A. No; they went out of my sight by the wood there.

Q. Did they return at any time afterwards?

A. Yes, they did—at least I was told so. I did not see them.

Q. Did you see any portion of those men, or any men of a similar description, in the course of the morning afterwards?

A. Yes.

Q. How soon after?

A. In about an hour afterwards, or perhaps less.

Q. Where did you see them the second time?

A. Marching along the drove-road, going up to Bonnymuir.

Q. Is that a piece of open ground in your neighbourhood?

A. It is what we call the drove-road there, where they drove the cattle from the north of Scotland to the south of England.

Q. You saw them marching towards Bonnymuir?

A. Y es.

Q. Did you see to what place they did go?

A. They went up to the top of the hill.

Q. You saw them do that?

A. Yes.

Q. Had you any opportunity, the second time, of observing whether any of those men had guns or muskets?

A. Yes, that was the time I saw it most, because I was near it.

Q. Were you so near as to enable you to see what they had?

A. I saw a few had guns.

Q. And what had the others?

A. Those long sticks.

Q. With glittering iron at the ends of them?

A. Yes.

Q. Did the sun shine upon them the last time?

A. No, they were close to the edge of the wood.

Q. Were you enabled to say, from what you saw of them the last time, whether they were the same party you had seen in the morning on opening your window-shutters?

A. They appeared to me the same in number.

Q. They went up towards the Bonnymuir?

A. Yes.

Q. In what way were they carrying their arms and their guns the last time?

A. They were going in a more careless manner, in a straggling posture, not keeping step so well as formerly.

Q. Did you trace them with your eye up to the Muir?

A. Yes.

Q. What did you observe them do when they got there?

A. They went up to the top of the hill, and in a manner made a halt there.

Q. That is, they halted there?

A. Yes, some stood still, and some sat down.

Q. Did they continue in that situation any length of time?

A. Yes, they stood there for about, may be, half an hour.

Q. At this time were you in sight of them?

A. Oh yes.

Q. Did you continue to observe them during the time you are speaking of?

A. I think so—it might be about that time that I was keeping my eye upon them.

Q. You were keeping your eye on them, whether it was twenty minutes or half an hour?

A. Yes, thereabouts.

Q. Did any thing take place, and when, and what?

A. I was returning homeward, going to take my breakfast, when I came over the top of the hill, and I saw a troop of cavalry coming at full speed; and I stood still at the top of the hill, and they came through the aqueduct, to see whether they would go eastward or forward.

Q. A troop of cavalry coming at full speed, you say you saw?

A. Yes.

Q. How far were you off the place at which these men were assembled at that time upon the muir?

A. I could not exactly say—I might be, perhaps, nighhand between a quarter and half a mile, to the best of my judgment.

Q. You saw a skirmish, did you not, between the cavalry and these men?

A. Yes.

Q. You say that your attention was attracted by cavalry?

A. Yes.

Q. Did you, upon seeing the cavalry, turn your eyes towards the men upon the muir?

A. Yes.

Q. Did they continue stationary upon the muir, sitting and standing, or do any thing?

A. They stood still in the same position, till the cavalry came through the aqueduct, and went up the drove-road, the same way that they did—till the cavalry got to the edge of the muir.

Q. Were the cavalry in sight of the persons above?

A. Yes, they certainly saw them, because they were placed upon a height, where they had a commanding view for three or four miles.

Q. Then they commanded a view of the cavalry?

A. Yes.

Q. Upon the cavalry getting to the edge of the muir, did the persons upon the muir do any thing?

A. I went up to the height, to see a chase, or something of thatkind, an d they were waving their hats round their heads.

Q. Who were waving their hats round their heads?

A. The people on the top of the muir.

Q. Had those persons who were sitting on the ground risen up at the time those hats were waved, or did they get up on the waving of the hats?

A. They were all standing, pretty nigh-hand to one another.

Q. Was there any shouting from any quarter?

A. I did not hear none, but I saw the hats going round.

Q. Did you see more than one hat waved?

A. I saw just their hats in their hands; I could not say the number, but a few.

Q. Upon their hats being waved in the way that you have mentioned, what took place?—did they move from the spot?

A. The cavalry came up, and the men ran down the hollow; and they clapped themselves at the back of a dike.

Q. They ran down the hill?

A. Yes.

Q. Was that nearer to you?

A. Coming to meet the cavalry—coming up.

Q. Did they come nearer towards you?

A. No; they were running to the northward, and I was to the west.

Q. Did they all run down the hill, or the greater part of them?

A. I could not say—the greater part of them.

Q. Did they run down to a dike?

A. Yes.

Q. What did they do then?

A. They all placed themselves along the back of it.

Q. Do you mean that they took up a position along the back of it?

A. Yes.

Q. Were they all in a heap, or did they extend themselves in line?

A. The greater part, to the best of my judgment, I thought were in line?

Q. About what height might that dike be?

A. Four feet nine.

Q. A short man, therefore, would hardly be visible over the dike?

A. They were in a looting posture.

Q. While they were in that posture, what part of them was visible over the dike?

A. None at all.

Q. Was any thing done by them, or by any of them, after they had attained the dike, and assumed that posture?

A. The cavalry came up, and they commenced firing upon them in an irregular manner.

Q. Who do you mean by *they* commenced firing?

A. Those fellows who had taken up the position in line behind the dike.

Q. They began firing at the cavalry?

A. Yes.

Q. How far distant from the dike were the cavalry, in your judgment, when the first shot was fired by those men?

A. I could not exactly say, but to the best of my judgment, I think, between eighty and an hundred yards.

Q. Were you near enough to see whether any muskets were levelled over the dike?

A. Yes, I was just about six hundred yards distant.

Q. Did you observe that?

A. Yes.

Q. What did you see across?

A. I saw the guns over the dike, when they were fired.

Q. Were those guns which you so saw levelled, the guns fired at the cavalry?

A. Yes.

Q. How many shots were fired, do you think?

A. I could not exactly say, because they were in an irregular manner—first one shot, and then two, in an irregular manner.

Q. Were there more than two?

A. Yes, there were more than two, but first one and then two.

Q. A sort of running fire?

A. Just in an irregular manner.

Q. Did the cavalry, notwithstanding this firing, continue to near the dike?

A. Yes.

Q. Before the running fire of which you have been speaking commenced, had there been a single shot fired by any one of the cavalry?

A. I could not exactly say when they fired—to the best of my judgment, they came through a small slap at the end of the dike before they fired.

Q. Did the cavalry fire before they got through that slap?

A. I could not say.

Q. You say that the guns were levelled across the dike?

A. Yes.

Q. And some of those guns were fired?

A. Yes.

Q. Before those guns were fired, do you know whether any pistol-shot, or any other shot, had been fired by any of the soldiers?

A. I am certain not.

Q. Am I to understand you, then, that no pistol, or shot from any instrument, either carabine, musket, or pistol, was

fired by the soldiers, till after the firing from the dike, in the manner you have stated to us?

A. I am certain of that.

Q. The number of shots you do not affect to tell us?

A. I cannot say.

Q. You saw, you say, the cavalry get through a slap?

A. Yes.

Q. Do you know which of them went over first?

A. No, I could not say.

Q. After that, you saw firing by the cavalry?

A. Yes; I could see nothing for about a minute, for a cloud of smoke; and there was a pistol shot then—I cannot say who was firing then.

Q. After that, did you see the whole of it?

A. Yes, it did not last long—in the course of about a minute, they were all dispersed, running along the muir, and taken prisoners.

Q. All the men?

A. Yes.

Q. Bonnymuir is in the parish of Falkirk, is it not?

A. Yes.

Q. And that is in the county of Stirling, we understaud?

A. Yes.

Q. Was there any person who had been wounded on either side, taken down to your house on that day?

A. Yes.

Q. Who was it, do you know?

A. I cannot say.

Q. Where was he carried to?

A. He was carried down to my house.

Q. Was he lodged in your house that night?

A. The lieutenant gave orders for him to be taken away, and asked me if I would allow him to be taken to my house, and I said yes, and he was carried away by the crowd.

Q. Was he much wounded?

A. I did not see.

Q. Was he there at night?

A. Yes.

Q. Did you visit him in the morning?

A. Yes, I went into the apartment, and one of my friends went in in the morning, and they observed one of the windows forced up, and he was missing.

Q That person you did not know, you say?

A. No, I did not.

Cross-examined by Mr Jeffrey.

Q. The cavalry were going full speed when you saw them first?

A. Yes, at a canter.

Q. Had they their swords drawn?

A. I could not see.

Q. Had they their swords drawn when they went to the edge of the muir?

A. I could not distinguish that, because I was casting my eye on one and the other.

Q. They went on without check or halt till they came near this dike?

A. Yes.

Q. And you think they did not fire till after some shots had been fired across the dike?

A. Yes, I am certain of that, that they did not fire till a number of shots were fired at them.

Lord President.—Andrew Hardie, have you any questions to put to this witness?

Prisoner.—No.

James Russel, residing at Longcroft, in the parish of Denny—*sworn.*

Examined by Mr Drummond.

Q. Are you proprietor of Longcroft?

A. Yes.

Q. And you live there?

A. Yes.

Q. You lived there in the month of April last?

A. Yes.

Q. Longcroft is in the parish of Denny?

A. Yes.

Q. Is it near the public road?

A. Yes.

Q. How far is it from it?

A. About a gun-shot I think.

Q. Do you remember, in the beginning of April, one morning a party of men coming to your house?

A. Yes.

Q. Do you remember what day of April that was?

A. It was the 5th day of April.

Q. About what time in the morning?

A. It was between seven and nine.

Q. A party of men came to your house then?

A. Yes.

Q. What did they do?

A. I did not hear of their coming till I was informed by some bairns that were about the door. They came in, and told me that the radicals, as they called them, were at the end of the house; and, as I had two guns in the house, I ran and hid one of them, and before I returned from hiding it, one of them had a gripe of the other one.

Q. How many of the men might there be?

A There was only two came into the house, and one of them took the gun, and the other staid within the door.

Q. How many were on the outside, or at the door?

A. After the one returned that took the gun, I looked out and I saw another one; there might be more, but I did not see them.

Q. He took away the gun?

A Yes.

Q. Did you say any thing to him?

A. I alleged the gun was my property, and it was unlawful for him to take it; and he said he would give a receipt for it.

Q. What part of the house was the gun in at the time?

A. It was just hanging in the kitchen.

Q. Upon the wall?

A. No; it was on the foreside of a kitchen bed.

Q. Did you ever see that gun afterwards?

A. Yes; in the Castle.

Q. In the Castle here?

A. Yes.

Q. And you would know it again?

A. Yes.

Mr Drummond.—There are two witnesses to prove the labels on these boxes; but I presume, if the labels are broke in the Jury's presence, we can call the men afterwards.

Lord President.—I cannot tell what the Jury may require in a case of this kind.

Mr Drummond.—It is very easy to remove this witness, and call him again.

JAMES MURRAY, armourer in Stirling Castle, *sworn.*

Examined by Mr Drummond.

Q. Look at the labels of those boxes, and see whether they are as you sealed them?

A. That is my signature.

Q. Look at each box?

A. Yes; I saw them both sealed up, and my name is upon the labels.

Q. You are the armourer of the Castle?

A. Yes.

Q. And you know that these things have been kept there ever since they were brought to you?

A. Yes.

Q. When did you see them first?

A. When they were delivered into Stirling Castle.

Q. When was that?

A. It was about the beginning of April.

Q. Who delivered them into the castle?

A. They were delivered in charge to the ordnance storekeeper.

Q. Mr Benson?

A. Yes.

Q. You know that those boxes contain the same things that were delivered at that time to Mr Benson?

A. Yes; the very same.

Cross-examined by Mr Jeffrey.

Q. How do you know that?

A. Because I examined them.

Q. In whose keeping were they from the time you saw them first put in those boxes?

A. In the custody of the keeper of the ordnance stores —in my charge.

Q. In what room or place?

A. In the room below the staircase.

Q. Who had the key?

A. I had.

Q. Were you the only person who had it?

A. Yes.

Q. Did you ever part with the key while you had it?

A. No.

Q. Except you went yourself in?

A. Except I went myself in.

Lord President.—Andrew Hardie, have you any question to ask of this witness?

Prisoner.—No.

Mr Serjeant Hullock.—Were you present when any of those arms were drawn?

A. No; but John Murray, my son, drew them.

Q. You saw the arms deposited in those chests?

A. Yes

Q. And they have been under your care ever since?

A. Ever since.

JOHN BENSON, ordinance store-keeper in Stirling Castle—*sworn.*

Examined by Mr Drummond.

Q. You are ordnance store-keeper in Stirling Castle?

A. Yes.

Q. Did you see these boxes sealed up?

A Yes.

Q. Look at them, and see whether they are in the same state?

A. Yes; this is my signature here.

Q. And on the other box?

A. And on the other box too.

Mr Jeffrey.—Do you know those seals?

A. That is my seal.

Mr Serjeant Hullock.—When did you first see those things?

A. Some time in April.

Q. Did you make no memorandum of the day?

A. No, I do not recollect the day; I thought I had nothing to do with them; they were put into my charge; if I had got them in my books, I could have told you more about them.

Q. Have you got them in your books?

A. No; they were put into my care for production.

Q. Who brought them to you?

A. I think Mr Banks sent them there.

JAMES RUSSELL called again.

Examined by Mr Drummond.

Q. Be so good as look into this box, and see if you can find in it the gun which you have been speaking about,

which was taken away from your house in the month of April.

A. This is the gun, (*producing it.*)

Q. That is the gun that was taken away from your house in the beginning of April?

A. Yes.

Q. The gun that was hanging up upon the front of the bed?

A. Yes.

Q. You have seen that gun since it was taken away from your house, in the Castle?

A. Yes.

Q. Is that the gun that was shewn to you in the Castle?

A. Yes.

Lord President.—Andrew Hardie, have you any questions.

Prisoner.—No, my Lord.

WILLIAM GRINDLAY, residing at Bonnymill—*sworn.*

Examined by Mr Hope.

Q. Where do you live?

A. I live at Bonnymill.

Q. In the parish of Falkirk?

A. Yes.

Q. Do you recollect seeing any party of men, early one morning in April, near your house?

A. Yes, upon the 5th of April.

Q. At what hour in the morning?

A. Between eight and nine, I think.

Q. What number of men did you see?

A. About twenty, I think.

Q. Were they going carelessly along, or did they appear to be marching?

A. They were rather in a marching order, I think.

Q. Were they carrying any thing in their hands?

A. Most of them were carrying pikes, I think.'

Q. Had any of them any other weapons in their hands?

A. I observed one with a gun.

Q. In what direction were those men going when you saw them?

A. Going east the canal bank.

Q. In what direction is that—towards Falkirk?

A. Yes.

Q. And Camelon?

A. Yes.

Q. Did you lose sight of them?

A. Yes, they went out of my sight.

Q. Did you see that party, or a similar party, again shortly afterwards?

A. They did return, but I did not see them upon their return.

Q. Did you see any thing take place at a distance some time afterwards, upon a height upon Bonnymuir?

A. Yes, I see'd the smoke of the guns.

Q. And you saw some cavalry?

A. Yes.

Q. Pursuing a parcel of people?

A. Yes.

Q. After those men passed your house, did you miss any thing that you had had about your door?

A. Yes, I was informed———

Q. I ask you if you missed any thing?

A. I did not miss it till I was informed by some of the family.

Q. Did you then miss something?

A. Yes.

Q. What was that?

A. A pitchfork.

Q. Did you ever see that pitchfork again?

A. Yes, I saw the horsemen have it when they returned back.

Q. Were those horsemen bringing any men along with them on foot?

A. Yes.

Q. Was that the party which you had seen pass your house before?

A. I could not be positive; I got but a slight look at them.

Q. Did you believe them to be the same party?

A. Yes, I think they were.

Q. And one of the horsemen had then that pitchfork?

A Yes, one of the Yeomanry.

Q. See if you can find the pitchfork in that broad box?

A. This is it, without doubt, (*producing it.*)

Q. Where was that pitchfork the last time that you had seen it, before you saw it in the hands of one of the horsemen?

A. It was standing by the house side.

Q. Was that shortly before?

A. I did not see it that day, but it was standing there sure enough.

Q. You did not see it that morning yourself?

A. I did not.

Lord President.—You had left it standing by the side of your house the last time you saw it?

A. Yes.

Cross-examined by Mr Jeffrey.

Q. When had you seen that pitchfork last before you missed it?

A. I cannot be positive about that; it might be a day or two.

Q. You had not seen it that day?

A. No.

Q. Had you seen it the day before?

A. I cannot be positive to that.

Q. How do you know that pitchfork to be the same you once had about your house?

A. I know it perfectly well by the make.

Q. Is it of your own making?

A. No.

Q. What is there peculiar about the make of it?

Lord President.—You are treading on dangerous ground, and you need not put this question; it leaves it open to a fair argument for you.

Mr Jeffrey.—I am not afraid of it, my Lord.—How do you know that from any other?

A. I know it by that burn upon the shank, and the make of the fork.

Lord President.—I told you you were treading on dangerous ground: there was a fair argument open to you before, and you have gone on, and he has told you how he knows it to be his own most conclusively.

Mr Nicol Hugh Baird, residing at Kelvinhead, in the Parish of Kilsyth—*sworn.*

Examined by the Lord Advocate.

Q. Where do you live?

A. At Kelvinhead.

Q. Where is that?

A. Near Kilsyth—three miles east of Kilsyth.

Q. Are you a private in the Falkirk troop of Stirlingshire Yeomanry?

A. I am.

Q. Were you on duty in the month of April last?

A. I was.

Q. Where?

A. At Falkirk.

Q. When did you go upon duty?

A. It was on the Monday, the 3d of April, I think.

Q. Did you get leave of absence any day that week?

A. Yes, on Tuesday evening.

Q. To go home?

A. To go home.

Q. And when did you return to join your troop?

A. On the Wednesday morning.

Q. Early?

A. It was one o'clock.

Q. Did you meet any body in the way?

A. Yes, I did.

Q. Tell the Jury what occurred upon the road?

A. I came up with some men on the road, apparently armed.

Q. What time in the morning was that?

A. About a quarter or twenty minutes after seven, or perhaps the half hour.

Q. You overtook them?

A. Yes.

Q. How many?

A. There appeared to me to be a dozen of them, or thereabouts.

Q. Did they obstruct your passage, or what happened when you came up to them?

A. They did.

Q. They obstructed your passage?

A. They did.

Q. In what way?

A. I asked them to let me pass.

Q. Did they stop your passage across the road?

A. No; there was one man came out and obstructed my passage.

Q. What did he say to you?

A. He used some rough expression.

Q. Do you remember what it was?

A. "I will be damned if I will," or something of that sort.

Q. What did you do upon that?

A. I rode off instantly out of sight.

Q. Did you draw your pistol?

A. Yes; they asked my arms, and I drew out my pistol and presented it, and at that moment I rode off from them.

Q. Did you say any thing when you presented your pistol?

A. I do not remember exactly whether I said any thing or not.

Lord President.—You presented your pistol at them?

A. Yes.

Lord Advocate.—Which way did you go?

A. To Kilsyth.

Q. You turned back then?

A. Yes.

Q. What for?

A. To get the troops to apprehend them, as I understood them to be rebels.

Q. How far were you from Kilsyth at this time?

A. I was four miles and a half.

Q. To the eastward?

A. To the eastward.

Q. Did you meet any body in your way to Kilsyth?

A. Yes, I met one of the Kilsyth troop going to Stirling with dispatches.

Q. Did you tell him what happened to yourself?

A. Yes I did, and he turned round with me and rode off to Kilsyth again; and then I informed Lieutenant Hodgson of the 10th Hussars, and Lieutenant Davidson, that there were people on the road, and that they were advancing eastward.

Q. What happened then?

A. They immediately came off with a party of Hussars and Yeomanry.

Q. Were you one of the party?

A. Yes, I was ordered to join them.

Q. How many did they consist of?

A. Two or three and twenty, I am not correct.

Q. Were they partly Yeomanry and partly Hussars?

A. They were nearly half and half.

Q. How were they mounted?

A. The Hussars were mounted partly on the Yeomanry horses, and partly on their own.

Q. Did any of the Hussars come into Kilsyth before you moved off?

A. Yes, they came in immediately after I arrived in Kilsyth.

Q. Then this party moved off eastwards?

A. Yes.

Q. How far did they go?

A. To Bonnymuir.

Q. To Bonnymuir direct?

A. Yes.

Q. Did you proceed up the muir?

A. Yes, we did.

Q. Did you see any of the people then?

A. We did.

Q. Upon the top of the hill were they?

A. Yes, on the top of the hill.

Q. And you advanced towards them?

A. We did.

Q. What happened then? did they remain upon the top of the hill, or advance towards you?

A. They advanced towards us, and took up a position behind the wall on Bonnymuir.

Q. Did they come down the hill to that position?

A. Part way.

Q. Did they cheer?

A. Yes, they did cheer.

Q. What number might there be of them?

A. To the best of my recollection, there were about five and thirty or forty there appeared to be.

Q. Were they armed at that time?

A. Yes.

Q. What with?

A. With pikes and guns.

Q. After coming down to the wall, what happened then?

A. They fired on us a volley.

Q. Did they lay their pieces upon the top of the wall at this time?

A. They did; they levelled them off the top of the wall.

Q. What distance was the cavalry from them at that time?

A. To the best of my memory, thirty yards, or perhaps rather nearer.

Q. Did they fire a volley, or a single shot?

A. No, there were a number of shots.

Q. What number?

A. I cannot say.

Q. Were they continued?

A. No, they were nearly off at the same time.

Q. Was there any firing by the military at that time?

A. No, there was none before that.

Q. Did you advance up to the wall?

A. Yes, we did.

Q. What passed then; did Mr Hodgson communicate with these people.

A. Mr Hodgson, of the Hussars, rode up before us, and asked them to surrender, and all that he got was a few more shots.

Q. Did you get across this wall?

A. We got over the wall in among them.

Q. How did you get over the wall?

A. In at a slap.

Q. What happened after that? did they resist after this?

A. They did, and there was a blunderbuss presented to Lieutenant Hodgson when he got over the slap.

Q. Do you know by whom?

A. No, I do not.

Q. Did it miss fire, or what happened?

A. I do not know whether it missed fire, or was fired.

Q. How did it end? did these people give way at last?

A. Yes, they ran in all directions; there were several shots fired before they gave way, and then they ran in all directions, and we pursued and overtook them.

Q. And took them prisoners?

A. Yes, we did.

Q. And all the people that you took prisoners were engaged in that affair were they?

A. They were.

Q. Did you march them to Stirling Castle?

A. No, I accompanied them only to Bonnybridge, and I was sent from there to Edinburgh with dispatches.

Q. Look at that man, (*Hardie,*) and say if you saw him at that battle?

A. Yes, I think I did.

Q Was he active in the business?

A. He is much altered in appearance; I am rather at a loss.

Q. Say whether you know him or not?

A. Yes, I recollect him.

Q. Have you seen him since that?

A. Yes, I have.

Q. Where?

A. In Edinburgh.

Q. And did you know him then?

A. Yes, I knew him then.

Q. And he was one of the persons that was at that place?

A. Yes.

Q. You saw him at Edinburgh?

A. In the Castle—the Edinburgh prison.

Q. Were any cartridges or ammunition taken from these people?

A. Yes, there was.

Q. Did you see any of them searched?

A. Yes, several of them were stripped, and ammunition taken off them.

Q. That is to say ball cartridges?

A. Yes, ball cartridges.

Q. Several cartridges taken off several of the men?

A. Yes.

Q. Was there a bag taken from any of them?

A. Yes.

Q. What did it contain?

A. Ammunition, ball cartridges, and powder.

Q. Do you know any other of the persons there?

A. I know this man here, (*Murchie.*)

Q. Do you know any of the others?

A. The boy, (*Johnson.*)

Q. Any of the others?

A. And this, (*Baird.*)

Q. These were all in the battle, were they?

A. They were, and there is another one at the other end I think, Alexander Hart and Benjamin Moir.

Lord President.—Andrew Hardie, have you any question?

Prisoner.—No, my Lord.

Lord Advocate.—Did you mark any of the arms you found?

A. Yes, I did.

Q. When?

A. At the Castle in Stirling, when I gave in my declaration; I do not know the date.

Lord Justice Clerk.—Were those arms taken by you?

A. They were.

Q. By you individually?

A. No.

Lord Advocate.—Did you see the short gun taken that was presented at Lieutenant Hodgson?

A. Yes.

Q. Should you know that again if you were to see it?

A. Yes, this is it, (*producing it.*)

Q. Is there a label upon it with your name?

A. Yes, my name is upon it.

Q. Which of the prisoners was that taken from?

A. I do not know which of them it was.

THOMAS COOK, residing in Stirling Castle, Serjeant in 10th Royal Hussars—*sworn.*

Examined by Mr Serjeant Hullock.

Q. You belong to the 10th Hussars, do not you?

A. Yes.

Q. What are you? a serjeant?

A. Yes.

Q. Did you belong to that corps on the 5th of April last?

A. Yes.

Q. Where were you on the night of the 4th of April?

A. I slept in this town.

Q. Did you set off with Lieutenant Hodgson early in the morning of the 5th.

A. No.

Q. When did you leave Stirling?

A. About six o'clock in the morning.

Q. To what place were you bound?

A. To Kilsyth.

Q. On your journey to Kilsyth, did you meet any persons upon the road of any sort?

A. Yes.

Q. Do you know what part of the road it was that you met the persons you are speaking of?

A. I never was on the road before, but since I have found out the name of the place.

Q. How far might it be from Kilsyth?

A. Seven or eight miles.

Q. On this side of Kilsyth?

A. About half way between this place and Kilsyth, as near as I can judge.

Q. What description of persons did you meet on the road, and what number?

A. There were either five or six.

Q. Men?

A. Yes.

Q. What time of the morning might that be do you think?

A. As near as I can guess, about eight o'clock.

Q. Were you going fast then?

A. I was going at a walk.

Q. Did you meet them?

A. Yes, I met them.

Q. Were they armed men?

A. Yes.

Q. Armed with what species of arms?

A. With different descriptions of arms.

Q. Mention them.

A. There were pikes, pistols, and firelocks, (we will say fowling-pieces,) and one or two saws—but which I cannot say.

Q. There were five or six men?

A. Yes.

Q. But, however, they had those arms which you have mentioned?

A. Yes.—Some had got one arm, and some had got two. One had got a pistol, and another a pistol; and in that way one man might have two weapons.

Q. Had any one man two pikes, or two guns, or two pistols?

A. There was one man had a pistol and a fowling-piece.

Q. Was there any other man armed in that way—doubly armed?

A. I will not pretend to say that.

Q. Should you know any of the persons who met you that morning, if you saw them again?

A. Yes.

Q. Look about you.

A. I see one man (*Hardie,*) and this (*Murchie.*)

Q. Any other person amongst the number before you, whom you recollect?

A. No—I do not know that I can. There is one man who is not present, or I should know him.

Q. There was no other present?

A. To the best of my knowledge.

Q. Are you quite sure the two you have pointed at were of the number?

A. Yes.

Q. When you came close up to them, what were they doing?—Standing across the road, or on the road?

A. They stood right across the road, in a line. That man (*Hardie*) was dressing them by the left.

Q. Do you mean forming them?

A. They were formed, and he was dressing them in line.

Q. When you came up to them, did you, or they, say any thing to each other?

A. Yes.

Q. Did you speak first, or they?

A. I spoke first—No, I beg your pardon, I was within twenty yards of them, and they ordered me to halt.

Q. Did you obey them?

A. No.—I came up to them, and asked them what they wanted with me; and they gave me a reply, that they were seeking for their rights.

Q. They did not all speak together?

A. No.—One man said they were seeking for their rights, as honest men ought to do.

Q. Was it either of those two persons who said that?

A. I will not pretend to say that.

Q. What reply did you make to that?

A. I said I was very sorry for their case—I had nothing at all to do with it—and I hoped they would not molest me.

Q. Did they do any thing upon that—any of them?

A. They began discoursing of the different things in that way, and they began to say they were seeking for their rights; and I said I was very sorry for their situation; and one of them said, "I suppose you are an orderly; where are your dispatches?"

Q. What did you say to that?

A. I said I had none. I told them exactly the case, how I was left behind at Stirling, and the situation I was placed in.

Q. Did you state to them why you had been left behind?

A. Yes.

Q. What did they say to that?

A. They said it was a bad job for me, because I expected to get punishment for it.

Q. You stated to them the cause of your having been left behind?

A. Yes.

Q. Did they stop you?

A. They stopped me, and we had discourse together foı five or ten minutes.

Q. Did any thing pass about your arms?

A. One wanted to take my arms; and another said, "Do not do it;" another wanted ammunition, and I said I had none; and they left my arms alone, with my persuading them.

Q. What passed between you?

A. I told them I was a friend to their cause.

Q. Did you say what trade you had been in formerly?

A. Yes; I told them I was a weaver, and that I had a wife and family of my own, and I was very sorry for their situation.

Q. Did you mention the number of your children?

A. Not to my knowledge.

Q. They asked you for your arms?

A. Yes.

Q. Did they give you any thing?

A. They asked me if I could read, and I said yes, I could; and one of the men took out a roll.

Q. They asked you if you could read, did they?

A. Yes.

Q. You told them you could?

A. Yes.

Q. Upon your telling them that you could read, what did any of them do?

A. They took and pulled out a roll of hand-bills out of their pocket.

Q. Who did?

A. I cannot say who. One of the party; and he gave me one of them.

Q. What sort of roll?

A. The same as by those books.

Q. In this way?—(*Producing a roll of paper.*)

A. Yes.

Q. And did he give you one off, in that way?—(*Describing it.*)

A. Yes.

Q. What size might the bundle be?

A. I am not much of a judge; but I suppose there might be from fifty to a hundred. I cannot speak to the number precisely.

Q. And so they gave you one?—Did the roll appear to be of the same description of paper as that which they gave to you?

A. It appeared to be so; but I did not see any further than seeing the roll.

Q. As far as you could judge, was it so?

A. Yes.

Q. Did you put your eyes upon it immediately, to look at it?

A. Yes.

Q. What were the first words in it?

A. An address to the inhabitants of Great Britain and Ireland, to the best of my knowledge.

Q. Did you read the whole of it?

A. Yes, I did.

Q. Whilst they were with you?

A. No.—After I had left them.

Q. Did you read any other part of it besides "An Address to the Inhabitants of Great Britain and Ireland," at the time they were with you.

A. I took notice of the date of it.

Q. Give us the date?

A. April the 1st, 1820, was upon it.

Q. Do you recollect any other words near that part of it?

A. No.

Q. What did you do with that paper?

A. I read it as I went along the road by myself.

Q. They permitted you to pass?

A. Yes; and I read this paper afterwards.

Q. After you had told them you were a friend of theirs, they gave you that paper?

A. Yes.

Q. How soon did you begin to read it?—Immediately?

A. No; I called at a public-house on the right-hand side of the road, and had a glass of spirits; and then I had got out of their shot, about a quarter of a mile, and I read it.

Q. You went to Kilsyth?

A. Yes.

Q. Who was your commanding-officer there?

A. Lieutenant Davidson's head was out of the window, and I spoke to him. He was the first officer I spoke to.

Q. He was at the inn?

A. Yes.—I said I had a report to make to him.

Q. Was he your superior officer?

A. No.—Lieutenant Hodgson was.

Q. What did you do with the paper you received from those persons?

A. I gave it to Lieutenant Hodgson, and Lieutenant Davidson, and they did not read it, but gave it me again.

Q. You were present at the time they had it?

A. Yes.

Q. And they returned it to you?

A. Yes.

Q. What did you do with it after that?

A. I put it in my pocket, and went with the party towards the place.

Q. You went with it in your pocket towards Bonnymuir?

A. No; Lieutenant Hodgson asked me for it before we left the place.

Q. Did you give it him?

A. Yes, I did.

Q. Are you quite sure that the paper which you received from the person or persons upon the road, in the way that you have mentioned, was the same paper that you gave to Lieutenant Hodgson, before you reached Bonnymuir?

A. Yes.

Q. That you are sure of?

A. I am quite sure.

Q. Had you ever any other paper of that sort?

A. No, never in my life.

Q. You were in the party that went towards Bonnymuir?

A. Yes.

Q. Get yourself as far as Bonnymuir, without giving us any account of what took place in the road to it.—Where did you see the people on the muir first?—What were they doing?

A. We came into a kind of a bog on our right, and we turned to the left towards a wood, and we saw these men coming down the hill.

Q. Were they walking or running?

A. They were running down.

Q. Did you hear any cheering?

A. Yes; we were cheering, and they were cheering.

Q. Did they come down towards any place?

A. They came down to a wall.

Q. Did the cavalry pursue their course towards the wall?

A. Yes.

Q. What speed did you go?

A. I went at a trot. I was on my own mare; and she was a fast trotting mare; and could trot faster than some horses could gallop.

Q. Had she come from Stirling that morning?

A. Yes.

Q. Had she been on a march the day before?

A. Yes.

Q. Where from?

A. Between here and Perth.

Q. What took place on your going to the wall?

A. We had to come round the angle of a wood; and as soon as we came round the angle, they fired some shot at us.

Q. How near were you when the first shot was fired?

A. From thirty to forty yards.

Q. In what way was the shot fired, or shots—from muskets, or pistols, or how?

A. It was impossible to say.

Q. Where were the persons who fired them?

A. Behind the wall, to the best of my belief.

Q. Had your party fired before those shots took place?

A. No; they had not.

Q. After that, you got through a gap in the wall.

A. Yes.

Q. Then there was a skirmish took place?

A. There was a skirmish took place.

Q. Do you remember any of the persons in that engagement?

A. My attention was directed to the man who wished to take my arms away on the road; and that man is not taken.

Q. Is there any other person that you can recognize or identify?

A. I can identify them all after they were taken, but not before.

Q. How many were taken and formed up after the engagement ceased?

A. Eighteen.

Q. Are you quite sure that the eighteen who were so taken and formed up, were all engaged in that skirmish against you and the troops?

A. To the best of my belief.

Q. What became of those eighteen?—Were they marched to Stirling?

A. Yes.

Q. Did you accompany them to Stirling?

A. Yes.

Q. Did you see them delivered over to the Castle here?

A. Yes.

Q. Were the eighteen that were handed over into the custody of the same person in the Castle, the persons that you brought from Bonnymuir that day?

A. Yes.

Q. And, as far as you believe, all engaged in this skirmish?

A. Yes.

Q. You pointed at two men, as men who stopped you on the road; were those in the battle?

A. Yes.

Q. Did you see them?

A. I saw them formed up with the rest.

Q. Did you see, after the battle was over, any arms that were collected, which had been taken from persons engaged?

A. Yes; I picked up a pike myself.

Q What number of pikes might be collected, do you remember?

A. I cannot pretend to say. Almost every man had a pike and a gun. Every man that came into Stirling had some arms taken, but I cannot say what they were; I was a private at the time, and for that reason did not take notice.

Q. The whole of them had arms of one description or another?

A. To the best of my belief they had.

Q. Did you see any ammunition in the field?

A. No.—I saw a haversack on a man's shoulders.

Q. Did you see what it contained?

A. No.

Q. It was not examined in your presence?

A. No, it was not.

Cross-examined by Mr Jeffrey.

Q. You said, I think, that you recognized, in the skirmish, the men who had asked your arms on the road?

A. Yes; two of them.

Q. And you say that man was not among the prisoners after the skirmish

A. There were three of them.

Q. But one man asked your arms upon the road?

A. Yes.

Q. That man is not here?

A. No.

Q. One man asked your arms, and another interfered and said, "Do not take them."

A. Yes.

Q. Can you recognize the person who made the last observation?

A. No, I cannot; it was made amongst them.

Q. You told them at one time you were friendly to the cause, and had been a weaver—Had any of them mentioned their being weavers before that?

A. No.

Q. How came you to mention you were a weaver

A. Because I was one, and I knew the situation of their affairs.

Q. Did you merely conjecture they were weavers from what they said?

A. They did not mention what they were.

Q. It was one person that took out this roll of hand bills, and gave you one off it?

A. Yes.

Q. Can you recognize that person?

A. No, I cannot; it was one of them, which I cannot pretend to say.

Q. You recognize this man, and another man—was it either of those two?

A. I cannot say.—I do not know which it was.

Q. Did any other conversation pass that you have not mentioned, at the time they stopped you on the road?

A. Not to my knowledge; I have mentioned every thing, as far as I know, as passed between us.

Re-examined by Mr Serjeant Hullock.

Q. You say you cannot recollect by whom the hand-bill was delivered to you?

A. Yes.

Q. It was delivered by one of the five or six?

A. Yes.

Q. Did the other persons see it delivered to you?

A. Yes, they were all around me.

Q. Therefore, the others saw that delivery take place?

A. Yes.

ELLIS HODGSON, Esq. residing in Stirling, Lieutenant in 10th Regiment of Royal Hussars—*sworn.*

Examined by Mr Serjeant Hullock.

Q. I believe you are a Lieutenant in the 10th Hussars.

A. Yes.

Q. And were so on the 5th of April last?

A. I was.

Q. We understand you marched early that morning from this place to Kilsyth?

A. Yes, I did.

Q. At what time might you arrive at Kilsyth?

A. About half-past five, I think.

Q. Were your horses considerably jaded after the march you had had that night and the day before?

A. Yes, they were; we had gone very quick, at least quicker than we generally do.

Q. How soon after that was it you received information that induced you to set forward again?

A. I should think, about an hour and a half. I am not certain as to the time.

Q. Was that information derived from Cook?

A. No; first from Mr Baird of the yeomanry.

Q. Mr Nicol Hugh Baird?

A. I do not know his name.

Q. You received some information from him, which induced you to put yourselves in motion?

A. Yes.

Q. How soon was that before you saw Cook come in?

A. I should think, about ten minutes or a quarter of an hour.

Q. Cook had been left behind?

A. He had been left behind at Stirling, from not being able to find him at night; he had changed his quarters.

Q. Did Cook shew you any paper after his coming to Kilsyth?

A. Yes, he did

Q. Was Lieutenant Davidson present at the time?

A. I think he was; I am almost certain he was.

Q. Did you read that paper, or return it?

A. I looked at it at the time, and saw the nature of it. I did not read the whole of it; I saw that it was an address to the people.

Q. You did not read it through?

A. No; I did not at the time; I had not time.

Q. Was that the first time that you had seen an address of that description, as far as you recollect?

A. I am not quite certain; I think I had seen one the day before, at Stirling; I could recollect in time, but I am not certain.

Q. You did return it to him, after glancing your eye over it, very soon?

A. I gave it back to Cook.

Q. Did you soon after that set off from Kilsyth?

A. Yes.

Q. On whose horse did you ride?

A. I believe it was a Mr Thompson's of the Yeomanry.

Q. Your own horse?

A. I wished to save our own horses if I could; I thought we were likely to have a good deal of work for them.

Q. Were any of your men mounted on yeomanry horses?

A. Yes; ten or twelve.

Q. Did you assume the command of some Yeomanry?

A. Yes.

Q. How many did the party consist of?

A. I think thirty-two; there were sixteen of our own.

Q. You went in consequence of the information you received?

A. Yes; we went in the direction of Falkirk. This place, or Falkirk, the road is the same at first.

Q. Do you remember receiving a paper from Cook again, afterwards?

A. Yes; on the road I asked him for it, when we had gone about a mile, and I said, "You had better give me that paper."

Q. You asked him for the same paper which you had returned to him at Kilsyth?

A. Yes.

Q. And that paper you received from him?

A. Yes.

Q. Did you look at it?

A. I put it into my pocket, and looked at it afterwards.

Q. When?

A. I do not remember when.

Q. What became of you and the party?

A. We proceeded towards Falkirk.

Q. Describe what took place, and the order of the events, till after the battle of Bonnymuir.

A. We got intelligence which way the men who stopped Cook had gone, and were directed to a part of the muir, to which we proceeded, and found the men on the other side of a wall from us; they gave a cheer, and ran down in the direction towards us, to the wall; when we came within gun-shot of them, (perhaps fifty or sixty yards,) they fired upon us.

Q. What number of shots might be fired?

A. I am positive to two or three; there might be more, but two I am sure they fired. We had to go over the muir for half a quarter of a mile, to get to them; and when we came near the wall they fired two or three shots, or perhaps more.

Q. Were those shots fired from muskets or pistols?

A. It is impossible to say.

Q. Did you continue to advance?

A. We continued to advance till we got close to the wall; when we were close to the wall I ordered them to lay down their arms; at the same time, ordered my own party to cease firing, (they had returned the firing,) which they did do; and after ordering them five or six times to lay down their arms, I got round through a little gap there was, to the same side as them.

Q. You were followed by your men?

A. Of course.

Q. You say you ordered your men to cease firing?

A. Yes.

Q. Are you quite sure you were fired on before any shot was fired by your party?

A. Oh, certain.

Q. Then upon getting through this gap, what was done?

A. A few of the men had got through, and I presented my pistol at one of the men who appeared to be the ring-leader, and it flashed in the pan and did not go off.

Q. Were you near him?

A. Close to him.

Q. Just see if he is here now?

A. That is the man, (*Baird.*)

Q. Did you put the pistol to his head?

A. No, I put the pistol to his breast.

Q. Was that in return to the same compliment?

A. His musket had been presented at me the whole time I was getting round the wall.

Q. Do you know whether he pulled the trigger?

A. I have been told so since, but I do not know.

A Juryman.—Do you mean the man in the brown coat?

A. Yes, that is the man.

Mr Serjeant Hullock.—After you got through the wall, was any resistance made by them, and in what way?

A. They stopped us—they would not allow us to proceed, and we of course charged them immediately, and we had a short skirmish with them, and they dispersed.

Q. Were there any shot fired by them afterwards?

A. Some shots were fired, but whether by my own party, or them, I do not know.

Q. Did they make any resistance?

A. Yes, with pikes.

Q. In what way—as other pikemen do when attacked by horses?

A. They resisted us with the pikes presented to us.

Q. Did any of those pikes come near you?

A. I was wounded in the hand, and my horse was killed by one.

Q. What part of the horse was struck?

A. In the quarter.

Q. Did he die on the field, or take you out?

A. He took me off the field, and did not die till that night.

Q. Where was your hand?

A. I had a pistol in my hand, I fancy, and I was making it fast.

Q. Did it go through?

A. It went from this side, (*the outside.*)

Q. Were any of your men wounded?

A. The serjeant.

Q. Were both pike wounds?

A. Yes.

Q How many did you succeed in taking finally?

A. We brought to Stirling eighteen, and left one on the field very much wounded; we thought there might be a chance of a rescue, and I left him there, thinking it was better to secure what we had.

Q. Do you remember what number of muskets there were?

A. I think there were sixteen pikes and one pike handle, and a pitchfork, and five muskets or guns of different kinds, and two pistols.

Q. Any swords?

A. No, I do not think there were; there was some ammunition.

Q. All those articles were taken on the field at the time?

A. Yes, they were.

Q. You saw them probably put together at the time?

A. I saw them collected.

Q. Were they brought to the Castle in this town?

A. Yes, they were.

Q. Along with the prisoners?

A. Yes.

Q. You spoke of some ammunition, did you see any of the men on the field searched after the engagement?

A. I was collecting the prisoners, and when I came to the place where some of them had stopped at, I asked if they had searched the prisoners; they said, "Yes, and we have taken a bag of ammunition away from them."

Q. You did not see the search?

A. No.

Q. Who told you that?

A. I think the serjeant-major.

Q. Did he shew you the bag?

A. Yes.

Q. Did you look at the contents?

A. Yes; I saw some ball-cartridges.

Q. But who put them in, you cannot tell?

A. No, I cannot.

Q. Have the goodness to look at those persons, and tell us which of them you can recollect to have seen in the engagement?

Q. When you left Kilsyth with your party, you went with a view of finding those men, of whom you had received information?

A. Yes.

Q. What did you mean to do with them?

A. To secure them—to take them prisoners.

Q. And take their arms?

A. To take the men, and to take their arms, of course.

Q. Had your men their swords drawn when they came in sight of the party on the hill?

A. I do not think they had—No, not till we came in sight of the party—I am not positive—I should think not.

Q. Had they their swords drawn before the men fired?

A. I think so; whether I had given the word or not, I do not know; but probably they would have their swords drawn.

Q. Did you go up the muir pretty smartly?

A. As quick as we could.

Q. And they fired first?

A. Yes, of course.

Q. And as soon as you got near enough to be heard, you called to them to lay down their arms?

A. As soon as I was close to them; I did not call at the distance of fifty or sixty yards.

Q. Was any person in attendance, taking charge of them, or were they in one line?

A. Baird appeared to me the leader.

Q. But there was no person standing out for you to address?

A. I could address the whole; they must all have heard me.

Q. They were pretty close together?

A. Yes; they were in a small body, perhaps half a yard or a yard from each other.

Q. You got eighteen, and one was wounded; did any escape, do you know?

A. I cannot answer that.

Re-examined by Mr Serjeant Hullock.

Q. You addressed them several times?

A. I should think, six or seven times.

Q. State the language you used at that time?

A. Lay down your arms; I said nothing else.

Q. Are you quite sure you were near enough, at the time you repeated that expression, to enable every person in the body to hear you?

A. Decidedly so; for I spoke very loud, and they were all quite near enough to hear me.

Q. Was any alteration made in their movements at all?

A. They did not fire any more, but they did not lay down their arms.

Q. And the resistance took place that you spoke of, when you got through this gap in the fence?

A. They did not fire any more till we got into the middle of them, and then I do not know whether they fired any more or not.

Q. You do not know whether the firing then was by your party or them?

A. No, I do not.

Mr Jeffrey.—Did they say any thing at all after you called out to them to lay down their arms?

A. The word "Treat" was mentioned by one of them; I thought they said, "We will treat with you;" but any thing else I do not remember.

Q. Do you know who said that?

A. I do not know which of them. I heard the word "Treat," and it struck me that they wanted to make terms with us.

Lord President.—Prisoner, have you any thing to suggest?

Prisoner.—No, my Lord.

Mr Serjeant Hullock.—Did you mark any of the arms that were left in the Castle?

A. I left my signature upon them.

Q. On the day of their arrival?

A. Yes; but I did not see it wafered on, so that perhaps I shall not speak correctly about that.

JOHN JAMES DAVIDSON, Esq. Lieutenant in Kilsyth Yeomanry Cavalry—*sworn.*

Examined by Mr Drummond.

Q. You are a Lieutenant in the Kilsyth Yeomanry?

A. Yes.

Q. Do you remember going out from Kilsyth on the 5th of April, in the morning, towards Bonnymuir.

A. Yes.

Q. Describe the first thing you saw when you got near the place?

A. The first thing I saw on getting near the muir, was a number of men assembled upon a head.

Q. At Bonnymuir was that?

A. At Bonnymuir.

Q. What were they doing at the time you saw them first?

A. I rather think they were sitting at the time I saw them first.

Q. Did you advance with your party towards them?

A. Yes.

Q. Tell what passed?

A. When we got within about a quarter of a mile of them, they came down from the head, towards a wall; and when we got within about seventy or eighty yards of them, they fired upon us.

Q. Were they at the wall at the time they fired?

A. They were.

Q. Close behind the wall?

A. Yes.

Q. How many shots did they fire?

A. I think two shots at that time.

Q. Are you certain they fired first?

A. Perfectly certain.

Q. How near were you to them at the time those two shots were fired?

A. About seventy yards, I think; I cannot be exactly sure of the distance.

Q. After that, did you get through the wall; or what was done?

A. We got through the wall.

Q. What did Mr Hodgson do?

A. He desired them to lay down their arms.

Q. Was he without the wall at that time?

A. He was at the other side of the wall.

Q. Do you remember what he said?

A. I cannot remember the precise words, but it was to the purpose of laying down their arms.

Q. Did they lay down their arms when he desired them?

A. They did not.

Q. Did any of your party go through the gap afterwards?

A. Yes.

Q. Who went first?

A. Mr Hodgson.

Q. Was there any attempt made to prevent their getting through?

A. Yes, there was.

Q. In what manner?

A. By presenting some pikes at that gap.

Q. Were the men upon their knees who presented their pikes, or how?

A. Some of them were.

Q. Was there any firing at that time?

A. I cannot say; I rather think there was no firing at that time.

Q. After they got through the gap, what passed then?

A. We made a kind of charge at them, and they gave way immediately.

Q. Do you know the men again that made the opposition with the pikes, or made resistance at that time?

A. Yes.

Q. See if you can point them out there.

A. I know John Baird.

Q. Any other?—Do you know the man in the black coat in the centre, (*Hardie.*)

A. Yes.

Q. What were those doing at the time?

A. At the time that Mr Hodgson went through the gap, and during the time he was desiring them to lay down their arms, Baird was presenting a short gun or blunderbuss at Mr Hodgson.

Q. Did that other man stand with Baird, or what did he do?

A. He was in the front; I do not know exactly what he was doing at that time.

Q. Did you observe any thing he did in the course of the business?

A. No.

Q. Did he make a stand?

A. No; I cannot say in regard to that.

Lord President.—Was the prisoner in the front when you were passing the gap?

A. Yes, he was.

Mr Drummond.—Were they almost all armed?

A. I think I saw none unarmed.

Q. The arms were taken possession of at the same time that the men were, I suppose?

A. Yes.

Q. Do you remember the number of the pikes?

A. I think there were seventeen or eighteen; I cannot tell the number.

Q. And how many muskets?

A. Four or five.

Q. And a pitch-fork?

A. Yes.

Q. Any pistols?

A. There were some pistols; I do not know how many.

Q. Any ammunition?

A. Yes, some ammunition in a bag.

Q. Did you see it at that time?

A. Yes; I saw the bag at the time

Q. Where did you see it first?

A. I saw it in the hands of one of our party.

Q. In whose hands did you see it?

A. I believe the first person I saw with it was my cousin.

Q. What was his name?

A. John Davidson.

Q. Did you see the prisoners searched, and whether there was any thing found on their persons?

A. There were a number of them searched.

Q. Did you see what was found upon them?

A. There were cartridges found on them, I believe.

Lord President.—Did you see it?—You say you believe.

A. I saw some of them searched.

Mr Drummond.—Were they carried to Stirling?

A. They were carried to Stirling, and lodged in the Castle.

Q. And the arms and ammunition taken with them?

A. Yes.

Q. Did you see them lodged there?

A. Yes, I did.

Q. Both the men and the arms?

A. Both the men and the arms.

Q. Would you know the arms again?

A. I think I should know some of them; I remember this one, (*a pike*)—and I remember that one also, (*another pike.*)

Q. Did you see any of this sort? (*Another pike.*)

A. Yes; I saw that one certainly.

Q. There is your name to it?

A. Yes.

Q. Did you see it put on?

A. No.

Q. But you saw a thing of this kind?

A. Yes, I remember that one.

Q. Look at the guns?

A. I remember this one; I do not remember any others.

Lord President.—Andrew Hardie, have you any question to ask?

Prisoner.—No, my Lord.

ALEXANDER COUTTS, Gardener at Colzium, in the parish of Kilsyth—*sworn.*

Examined by Mr Hope.

Q. I understand you are a private in the Stirlingshire Yeomanry, in the Kilsyth troop?

A. Yes.

Q. And you were one of the party that marched from Kilsyth to Bonnymuir, in the beginning of April last?

A. Yes.

Q. And you were present at the skirmish that took place between a party of men there, and a party of the 10th Hussars and the Yeomanry?

A. Yes.

Q. You went along with the rest of the troops towards a wall?

A. Yes.

Q. And some shots were fired across the wall?

A. Yes.

Q. Did any of the Hussars or Yeomanry attempt to get over the wall?

A. We got through at a slap in the wall.

Q. Was any opposition made to your getting through at that slap?

A. Yes; a good deal of opposition.

Q. In what way?

A. Both shooting and pikes.

Q. After you got through the slap, was there any further opposition made?

A. Yes.

Q. Did that appear to be made generally by the whole party?

A. I could not have my eyes on all the party; but those who were using their arms, I can identify some of them.

Q. See if you observe any persons at the bar who were active in opposing the cavalry in going through the slap?

A. I see two just now.

Q. Which two?

A. This one, and the second again.

Q. Do you know his name?

A. Yes, Baird.

Q. Mention another?

A. Hardie.

Q. Did you see them taken prisoners?

A. Yes, I did.

Q. Did you say any thing to them at that time?

A. I said, I mark you two.

Q. Had that man (Hardie) been active in opposing the cavalry?

A. Yes, he was.

Q. Throughout the whole business, or at any particular time?

A. As soon as I got my eyes upon him.

Q. When did you first see him?

A. A little before I went through the slap.

Q. What was he doing then? had he a gun in his hand, or a pike?

A. It was a pike.

Q. He opposed the cavalry, you say, at the slap in getting through?

A. Yes.

Q. And did he offer opposition afterwards?

A. Yes.

Q. Did you see any bag taken in the field from any of the party?

A. I saw a bag when the prisoners were taken among the rest, but I did not see the bag taken; I saw the bag when we had convened the prisoners.

Q. Did you see any of the prisoners searched?

A. Yes, I searched one coat myself.

Q. Was any thing in that?

A. Nothing.

Q. Did you see any other person searched?

A. I saw one, but I do not know him.

Q. Did you see any of the men searched?

A. Yes, I saw some searched.

Q. Was any thing found in their pockets?

A. I heard our men speaking about it.

JOHN DAVIDSON, Farmer in Kilsyth Farm—*sworn.*

Examined by Mr Serjeant Hullock.

Q. I believe you are a member of the Kilsyth troop, are you not?

A. Yes.

Q. And you were in the skirmish?

A. Yes, I was.

Q. After the close of the engagement, did you either take, or see taken, any bag from any one of the persons who were taken?

A. There was a bag taken from one of them.

Q. Did you see it taken?

A. I saw it taken by one of the Hussars.

Q. Did you examine the bag—the contents of it?

A. I had the bag in my possession, and several parcels of ball-cartridges were put into it, and powder both.

Q. Do you know the man from whom it was taken?

A. I cannot say positively.

Q. Was he a man that had been engaged in the transaction?

A. He was one of the prisoners.

Q. You say some ball cartridges were put into the bag?

A. Yes.

Q. Did you examine the bag before those were put into it?

A. No.

Q. Where were the ball cartridges taken from that you saw put into the bag?

A. They were taken from the persons of several of the prisoner.

Q. Did you see the men examined?

A. I saw them searched by some of the party; some of the Hussars or Yeomanry, I cannot say which.

Q. How many of the men's persons might you see so searched?

A. Two or three, more or less; I believe the most of them were searched.

Q. Can you take upon you to say, from your recollection, whether ball cartridges were found upon each man, or only upon some of them?

A. I cannot say that.

Q. You are sure they were found on some of them?

A. I saw the parcels taken from some of them, and put into the bag.

Q. You saw their arms collected, did you not?

A. Yes.

Mr Serjeant Hullock.—My Lord, there are other witnesses who were engaged in the transaction, but we do not think it necessary to call them; we, therefore, propose to read the declarations of the prisoners.

Lord President.—Have you any questions to put to the witness?

Prisoner.—No, my Lord.

ALEXANDER DOW, Esq. one of the Sheriff-Substitutes of Stirling—*sworn.*

Examined by Mr Drummond.

Q. Look at that declaration, (*handing a paper to the witness.*) Was that declaration emitted by the prisoner at the bar in your presence?

A. Yes.

Q. Freely and voluntarily?

A. Freely and voluntarily

Q. He being of sound mind, and in his sober senses at the time?

A. Yes.

ROBERT SCONCE, Esq. writer in Stirling—*sworn.*

Examined by Mr Drummond.

Q. Look at that declaration, (*handing a paper to the witness.*) Was that emitted by the prisoner at the bar freely and voluntarily, he being in his sober senses and of sound mind at the time?

A. It was.

ADAM DUFF, Esq. Sheriff-Depute of the County of Edinburgh—*sworn.*

Examined by Mr Drummond.

Q. Look at those two declarations, and state the dates of them to the Court, (*handing two papers to the witness.*)

A. One declaration is dated the 11th day of April, the other declaration is dated the 14th of April.

Q. Those were both emitted in your presence by the prisoner at the bar, freely and voluntarily, and when he was in his sound and sober senses?

A. Yes.

Q. Look at this paper, (*handing a paper to the witness,*) you see a mark on the back?

A. Yes, I do.

Q. That is a paper referred to in one of those declarations?

A. It is.

JOHN WATKINS, Depute Sheriff-Clerk of County of Edinburgh—*sworn.*

Examined by Mr Drummond.

Q. Look at this?

A. Here is a declaration dated the 11th of April, and another of the 14th April.

Q. Both emitted in your presence by the prisoner at the bar, freely and voluntarily, in his sober senses?

A. Yes.

Q. Is that the document referred to in his declaration on the 11th of April, (*handing a paper to the witness.*)

A. Yes.

(*The following Declarations of the Prisoners were read.*)

At Stirling Castle, 7th April, 1820.

In presence of Alexander Dow, Esq. one of the Sheriff-Substitutes of Stirlingshire, compeared Andrew Hardie, weaver in Glasgow, present prisoner in Stirling Castle, to whom a petition, at the instance of Robert Sconce, writer in Stirling, Procurator-Fiscal of Court for the public interest, with the Sheriff-Substitute's warrant thereon, was read over. And the said Andrew Hardie being examined thereon, Declares, that what is stated in said petition is true, as the declarant cannot deny but that he was in arms: That he left Glasgow upon Tuesday night last, about twelve o'clock, in the company of several others, to the number of twenty, or thereby: That the declarant did not know the reason of their leaving Glasgow, nor where they were to go; but he was informed that a person was to accompany them who was to let them know as to this: That after he left Glasgow, he understood that the country was in arms, and that they were to join with one another: That the man who was to give them in-

structions proceeded on the road before the party, and although the declarant saw him, he does not know his name, or any thing about him: That the first place they halted at, after leaving Glasgow, was the village of Condorrat, where they got a glass of whiskey and a bit of bread: That the declarant did not pay any thing for what he got there, and he did not see any thing paid, but he supposes the bread and drink was paid for by John Baird, weaver in Condorrat, as it was he who desired the men to go into the house for the refreshment: That after they left Condorrat, part of them went by the canal, and part by the high road towards Camelon: That the declarant went by the high road, and both parties joined upon the banks of the canal, where they sat down and halted some time: That after halting there some time, a man came from Camelon, who told them that the people were unwilling to turn out, or words to that purpose, upon which they went to the muir, determined to stay till night, when they were to return to Glasgow; That after they were sometime in the muir, the cavalry made their appearance, and the declarant then rose up and proceeded with the rest down the hill to meet the cavalry. Declares, that he cannot say who commenced the firing, but there were shots exchanged: That the declarant had a pike in his hand, but did not use it; and he called to the men who were with him to lay down their arms, and called to the cavalry to give quarter, and spare the men's lives. Declares, that the declarant brought a firelock with him from Glasgow, which he had for several years; That when they were coming down the hill to meet the cavalry, some other man got his firelock and he got a pike; That to the best of his knowledge, most of the party were armed when they left Glasgow: That some of them had pike-shafts, but the heads were not fastened on till afterwards, and he thinks some had them fastened on at that time: That Baird at the time of the fight had a small firelock, but the declarant cannot say whether he discharged it or not: That he thinks at the time they went down the hill to meet the cavalry, the men considered that Baird had a sort of lead: That he (Baird) seemed to take a more active part than the rest:

That the declarant himself had no view to commit plunder or to shed blood, and he believes that none of the party with whom he was had: That about an hour and a half before they were taken prisoners, they met one of the Hussars on the road: That one of the party with whom the declarant was gave him a bill, or paper, the nature of which the declarant does not know: That they asked the Hussar where he was going, and some of them were for taking his arms from him; but the declarant gave his assistance in preventing this, and nothing was taken from him, and no shot was fired after him. Interrogated, Declares, that it was their purpose in going out to effect a change in public affairs: That the declarant did not mean the subversion of Government, but what he wanted was the restoration of the people's rights: That they wished Annual Parliaments and Election by Ballot: That the declarant does not mean that the people ever had Annual Parliaments and Election by Ballot, but that he conceived the people had a right to obtain what the majority of the nation applied for; and the declarant's idea was, that it was the duty of a proper government to grant whatever was thus applied for. And all this he declares to be truth.

(Signed) ANDREW HARDIE.
ALEX. DOW.

At Edinburgh, and within the house of the Governor of the Jail there, the 11th April, 1820.

In presence of Adam Duff, Esq. Sheriff-depute of the shire of Edinburgh, compeared Andrew Hardie, present prisoner in the Jail of Edinburgh; and the declaration emitted by him upon the seventh day of April current, at Stirling Castle, with the petition therein referred to, being read over to him, declares and adheres to the said declaration, which is signed by the Sheriff and the declarant, as relative hereto, of this date. And being further examined and interrogated, declares, that he left Glasgow by himself, on the night of Tuesday last, at about half-past ten o'clock, in or-

der to join a party of radicals which he heard were to assemble near Gadshill. Declares, that he received this information about a quarter past ten, from two people whom he met on the streets of Glasgow, whose names he does not know. Declares, that he heard several times, in the course of the evening of Tuesday, that there was to be a general rising of the people in the country; that England was all in arms, and that the mail coach was not to come in next morning. Declares, that he carried his firelock with him from Glasgow, but he had no ammunition: That he got three ball-cartridges at Gads-bridge, from a man whom he did not know. That this man was a tall man, dressed in dark-coloured surtout; who, when he gave the declarant the cartridges, wished him success, and said, he would join them soon, but the declarant never saw this man afterwards. Declares, that he met a party of about forty men at Gadshill: That there was a man said he had got instructions how to act, and where to go, and said the country was in arms. Declares, that this man was a little man, rather stout made, and appeared to be about forty years of age; he was dressed in a brown short coat and dark trowsers. Declares, that this man went on before them, to the different villages on the road, as far as Camelon, but the declarant never saw him after he left them to go to Camelon: That this man appeared to be like a tradesman, and was but indifferently dressed, and seemed a very active man. Declares, that the party went on to Condorrat, where they were joined by John Baird, mentioned in his former declaration: That the declarant had never previously seen Baird; but the man already mentioned, before getting to Condorrat, said, that he was going to meet Baird at Condorrat, and the declarant, from this, supposed that this man and Baird were acquainted. Declares, that some of the party, before getting to Condorrat, were carrying shafts without pike heads, and some without weapons; but after they left Condorrat they were all armed with pikes or muskets, except two or three. Declares, that the man already mentioned as going before the party, was in Condorrat a few minutes before the arrival of the party. Declares, that in the morning after leaving Condorrat, the declarant

recognized Alexander Johnston, Andrew White, and David Thomson, present prisoners in Edinburgh Jail: That the declarant had previously known these people only by sight, and did not know their names. Declares, that Baird, and some others, joined the party at Condorrat. Declares, that at a canal bridge at some distance from Condorrat, the party separated into two divisions—one taking the high road towards Camelon, and the other proceeding by the canal bank, in order that they might not miss people whom they expected to meet coming from Camelon: That the declarant was of the party who went by the road. Declares, that Allan Murchy, present prisoner in Edinburgh Jail, and two men of the names of Henderson and Alexander, were of the declarant's party. Declares, that after proceeding some way on the road, they saw a hussar, who halted on seeing them; but the declarant called to him to come forward, as there was no danger: That the hussar came forward, aud stopped, when one of the declarant's party seized the horse by the bridle, and Henderson gave the hussar a folded paper: That the declarant did not know at the time what this paper was; but he was told, at Stirling, that this paper was a copy of the Address to the Inhabitants of Great Britain, which had been posted up at different parts of Glasgow. The hussar was then allowed to go on, and no attempt was made to take his arms; and a printed copy of said address being shewn the declarant, declares, that he never saw the same, or any copies of it, till he saw it posted up at Glasgow; and the said address is subscribed by the Sheriff and the declarant, as relative hereto, of this date: Declares, that the party that went by the high road also met with a gentleman riding towards Glasgow: That they advised this gentleman to return back; but they did not search him, or ask him for arms: That this gentleman went on for some way towards Glasgow, but afterwards returned, and passed the declarant's party, when he said, he would take their advice. Declares, that the whole party were unanimous as to taking arms wherever they could find them; and they searched a few houses for arms, but they only got one musket in the course of this search. Declares, that there was no resistance

to this search made at the houses. Declares, that the hussar, when he stopped, said he was a weaver, and a friend to the cause, and that he had a wife and five children. Declares, that the whole party which left Condorrat got some refreshment at a bridge on the canal, before they separated, and the allowance to each was half a bottle of porter and a pennyworth of bread. Declares, that this refreshment was paid for by Baird: That the reckoning came to seven shillings and sixpence; and Baird borrowed four shillings from the declarant for this purpose: That the landlord gave Baird a receipt for the said sum: That the declarant carried this receipt in his hat for some time, and then gave it to Baird; and a receipt, signed Archibald Buchanan, being now shewn the declarant, he declares, that it is the receipt above referred to; and the same is now subscribed by the Sheriff and the declarant, as relative hereto. Declares, that both parties joined on the banks of the canal, within sight of a town which he understood was Camelon: That the party who had gone by the canal had reached this point before the declarant's party; and upon the declarant's party joining them, they were told that the Camelon party was not to rise. Declares, that there was with the party, at this time, an old man, who, as the declarant understood, had come from Camelon, and had brought this intelligence. Declares, that he does not know the name of this old man, but he afterwards saw him in Stirling Castle, wounded. Declares, that the declarant's party, on going down the hill to meet the cavalry, as mentioned in his former declaration, began cheering. Declares, that the declarant did not consider himself as having any charge of the party with which he went by the road; but he took a charge, when the hussar came up, to prevent his being hurt. Declares, that what is mentioned in his former declaration about Annual Parliaments and Election by Ballot, is what he has heard from others, as the declarant does not understand or interfere in politics himself. All which he declares to be truth.

(Signed) ANDREW HARDIE.
ADAM DUFF.

At Edinburgh Castle, 14th April, 1820.

In presence of Adam Duff, Esq. Sheriff-depute of the shire of Edinburgh, compeared Andrew Hardie, present prisoner in the Castle of Edinburgh; and the declaration emitted by him at Stirling Castle on the 7th current, and the declaration emitted by him at Edinburgh on the 11th current, being read over to him, he declares and adheres to these declarations, with this addition,—that after leaving Condorrat, he also recognized a lad of the name of Pink as being one of the party; and that Pink is now a prisoner in the Castle. Declares, that when the hussar was stopped, as mentioned in his former declaration, and his horse seized by the bridle, the declarant, on recollection, rather thinks that he himself had a hold of the hussar's bridle. Declares, that the musket which the declarant's party took from a house, in their search for arms, as mentioned in his second declaration, was half-stocked, and was taken from a house off the road, hardly a stone-cast, and on the right hand coming from Glasgow to Falkirk: That there was a few houses on the road at this place. Declares, that the musket was hanging from the roof of the kitchen, about five feet from the fire. Declares, that there was an old man in the house; and either this old man, or some other person, asked when he would get the musket again; when the declarant said, he would give a receipt for it, but no receipt was required. Declares, that the three ball-cartridges mentioned in his second declaration, as having been given the declarant at Gadsbridge, were given by the declarant to the cavalry, when he was taken prisoner. Declares, that when at Condorrat, the declarant was ordered (but he does not recollect who gave him this order) to go to a shop for powder: That the declarant does not know who keeps this shop, but he got the powder without paying for it: That he supposes he got about a pound of powder, which was wrapped in a piece of paper, and given up by him to the cavalry, when he was taken prisoner. Declares, that he also got seven loose bullets from a lad on the road, who was one of the party; but

this was at night, before reaching Condorrat; and these bullets were also given up by him to the cavalry, when he was taken prisoner. Declares, that Henderson got the musket which was taken from the house where the old man was. Declares, that he knew Henderson by sight, previously to this, but he never was in company till that evening, but he had heard of Henderson being a radical. Declares, that the declarant was at a meeting of radical reformers at Thrush-Grove, and he thinks it is upwards of two years since this meeting was held.

(Signed) ANDREW HARDIE.
ADAM DUFF.

Lord Advocate.—We now propose to read the address.

Mr Jeffrey.—My Lord, with great submission, I conceive this address has not been brought so home to the prisoner as to entitle the prosecutor to read it.

Mr Drummond.—Which address?

Mr Jeffrey.—Either of them, I think.

Mr Drummond.—There are three altogether.

Mr Jeffrey.—The last address cannot be read at all, because all the prisoner said about it is, that he had seen such an address in the streets of Edinburgh, and he understood, after he was in custody, that the folded paper which he saw delivered to Captain Hodgson was a copy of the same address; but this is merely matter of information. The only other two addresses produced is one taken down by Mr Hardie from the well in Glasgow, and another which appears to have been delivered by Henderson, or some person in the party, to Cook, and by him given over to the commanding officer who produced it. Now, with regard to the first of those, I submit that no other part can be put in evidence, except that which was uttered or communicated, or, in some measure, stated in the prisoner's presence. And, my Lord, it was for this reason I made no objection to Mr Hardie reading that portion of the address which he says he heard read in the presence and hearing of the prisoner, because I looked on that as parallel to a recollection of words uttered in the presence of the party accused; and

whatever inference is to be drawn from that circumstance, I admit to be legitimately drawn, *valeat quantum*; but I submit, that, as there is no evidence that more of it was read to the prisoner, or that he was acquainted with more of it, they cannot be allowed to read the remainder. It is not enough to put in evidence a paper, unless you shew that the party expressed approbation of its tenor and purpose. You cannot read a paper because a part of it was read in his presence. My Lord, that does not connect him with the whole, as a paper for which he is responsible; and the rule is to refuse the reading such a document to the Jury, for fear of the prejudice that may arise, unless the prisoner is responsible for it in some way or other, or adopts it. Therefore, I submit there is nothing proved as to that address, except as to the passage which has been read, and which may be read again. Then with regard to the other address——

Lord President.—He prevented its being torn down.

Mr Jeffrey.—I am aware of that, my Lord; but nothing is more natural than that a person, out of curiosity, should wish to hear a performance that began in so remarkable a way; and that may account for his interfering to prevent its being pulled down, but is surely no ground for saying he is answerable for it. It might be a paper which he reprobated afterwards; and there is no evidence that the tenor was approved by him, and the evidence only goes to shew that part only had been communicated to him. Then, with regard to the third hand-bill, or that delivered by some person to Cook, your Lordships will recollect that that person said, that he could not at all say by what individual it was so delivered—that it was delivered out of a bundle of other papers, but he did not read it in the presence of any of the persons at the time; and the declaration of the prisoner states, though that certainly is no more than my stating it now, that he was not then aware of its contents. Now, I apprehend, there is no precedent for holding, where parties have not been clearly proved to have been engaged in a conspiracy, in a definite and distinct character, that the acts of one can affect the other; and, though it may be anticipating

part of the observations on the evidence, I submit there is no evidence of such a conspiracy other than the direct evidence against the prisoner; and therefore the act of this individual, who must be held not to be the prisoner—indeed it is quite clear that it was not him—is no sort of proof against him; and therefore, I say, that the paper not being given by him, it is incorrect to make him responsible for its contents, or to allow him to be touched on that account in a matter like the present. I submit, therefore, there is no evidence on which the prosecutor can be allowed to read the whole of this, as forming a part of the evidence against the prisoner now at your Lordships' bar.

Mr Serjeant Hullock.—My Lord, I submit there is no ground for this objection; I submit the first part of the address, proved by Mr Hardie, is admissible in point of law, on every principle received in courts of justice, and that the last address delivered by one of the party, in whose company the prisoner was, to Cook, is already admissible. As to the address taken down by Mr Hardie, it seems to be conceded, that the passage in that address which was read aloud, and which was in the act of being read to the party assembled in Duke-street, is admissible in evidence. Is that so? then upon what legitimate principle is the other part to be excluded? I have yet heard none. I apprehend that it is quite clear, that where a person prevents a witness from producing the original document by destroying it, or prevents him, without incurring the risk this gentleman must have incurred from getting it, it would be competent for me to examine him to the contents of that address, because the reason for my not being in a condition to produce it, was the misconduct of the party against whom I want it; if I give notice to produce a document, and the prisoner has prevented my getting it, am I therefore not in a condition to give evidence of the contents of it? The principle of law is clear and uniform; I may call any man who has read it to give evidence of it, because the man precludes me from giving the best evidence of it: Is not that the state of things here? Where is the loyal man that would prevent a subject from taking down an address of this description, or that

would spill the last drop of his blood to prevent it; but this man does that upon that occasion; he prevents Mr Hardie from taking that address down—he seizes him by the neck, and throws him into the street—he repeats it afterwards, and five or six men surround him, and put themselves in battle array to protect this loyal address; and are we to be told to-day, on principles of evidence, forsooth, that we are not to give in evidence the contents of that document? I beg to say, there is no principle with which I am acquainted that ought to preclude us from reading that address, which Mr Hardie swears to be similar to that which he was prevented from taking down.

So much for that address. Now for the other; we are told, and gravely told, that, because the prisoner Hardie was not the hand that delivered the paper to the hussar (Cook,) that which was down in his presence, they being acting in concert, and for one general object of treason, is not evidence against Hardie. We have proved Hardie was in the battle—that he was at the consummation of this pure and unadulterated treason; we have proved he was privy to all these arguments; and we have proved, by his own declaration, that he left Glasgow to join any party that would join him; and then after that, we meet with him with five other persons in the room, acting in concert for the general enterprize and object; and we are to be told to-day that which is inconsistent with every paragraph upon the subject of the law of Treason in every book on the subject, that that which is done by one man in the presence of another, or in his absence, let it never be forgotten, if it be in fact calculated to further the grand object, is evidence against the whole. But if this had been an ordinary felony, where the acts of one, in the absence of the others, is not evidence against the others, yet here they are acting in concert; whether the prisoner knew the contents of this paper or not, he is bound, by the acts of his party, though not present at the time. I submit, therefore, in point of law, there is no objection to the receipt of these documents, either the one or the other. I expected my learned friend would have taken an objection to the identity of the address delivered to Cook.

Mr Jeffrey.—I mean to take it.

Mr Serjeant Hullock.—See how that takes place; Cook receives it and puts it in his pocket; he comes and shews it, in the first place, to his officer, Lieutenant Hodgson, who has no time to read it; he returns it, and in the course of their march, he requires Cook to restore it to him. Mr Hodgson certainly did not do that which he ought to have done, namely, have put his name on it before he handed it over to his commanding officer; but it was stated it was only out of his custody a day or a night, to enable that commanding officer to copy it, and he believes that is the identical address; he does not swear to its absolute identity, but the question is, whether the evidence is not sufficient to establish that fact in such a way as to entitle us to read that address; but I do not feel any anxiety on the latter address, because, if I understand the circumstances as to the address delivered in by Mr Hardie, I am entitled to read that—one will do as well as a thousand; and I submit I am entitled to read that address.

Mr Jeffrey.—I shall detain your Lordships with very few words, and shall begin with the address produced by Mr Hardie; and I am happy to think, that with regard to that part of the case, the learned gentleman and I are not much at variance. With regard to the principle of evidence, I admit, that when a document, which, if it had been in the power of the witness, would have been good evidence against the prisoner, is prevented getting into his power by the act of the prisoner, the tenor of that paper may be proved: But I demur to the point, whether, if the paper had been actually here, more of it could have been read in evidence than that which was read by Mr Hardie; and therefore, without disputing the point, that where a document is withheld by the act of the prisoner, the import of it may be otherwise proved, I submit that this could be only where the document itself would be evidence against the party; and I contend that it is no ground for the production of a paper, that a part of it was read in his hearing, and that is all that is proved as to that first paper; and therefore I submit, that be-

yond the paragraph already read, no ground has been laid for receiving that evidence.

But there is another and a separate objection, my Lords; the paper produced is not the paper to read, but another paper, the identity of which depends upon the recollection of Mr Hardie. Mr Hardie, the magistrate, did not read further in the paper than the passage which he recited and marked out to the Jury; he did not read the preceding part of it, and certainly not the subsequent part of it. Your Lordships will bear in mind, that the paper now offered is not the paper that he read part of, but a paper in which, from recollection, he says, the same passage occurs, but farther than that it is merely conjecture; and therefore, as it is not in evidence that the paper produced ever was in the eye-shot of the prisoner at the bar, I do submit, that that paper is not of a description which they are entitled to put in evidence. It is not proved by any thing like evidence that it is a copy of the same paper; it never was collated or compared with it, and the witness did not read that which must be considered the original; and therefore I submit, your Lordships cannot, consistently with the rules of evidence referred to on the other side, allow it to be produced against the prisoner at all.

Now, my Lords, with regard to the other address, I do not dispute the general maxim of law relied on on the other side, that that which is done in the presence of a party not dissenting from it, may be put in evidence against him, although not done by his own hand or voice. I therefore cannot object to their proving the fact of the hand-bill having been produced and given by one of the party who were along with my client to this hussar; but does it follow from that rule, or is it not a monstrous and manifest perversion of the rule, that you are therefore to hold the prisoner responsible for its contents? The delivery of the paper is an act done in his presence, and that fact may be put in evidence; but if a man in my presence merely delivers a folded paper, which nobody reads, though there is no dissent or token of disapprobation manifested, on the legitimate application of the rule, I submit that could not be read where

there was no evidence that I knew the contents; the delivering a sealed paper in my presence cannot load me with a knowledge of its contents, which were not promulgated at the time. I submit, that this would be carrying the rule into a region in which it has plainly no force or existence; and that, under pretence of making a person responsible for what is done in his presence, it is plainly impossible to make him responsible for the contents of a paper not read in his hearing. And, therefore, my Lords, upon that ground I humbly submit, that unless your Lordships hold there is such an identity of pursuit and object in the whole, as I know has been ruled,—to make a party in the absence, and without the knowledge of another, responsible for his act, on the ground of there being a concert, this paper cannot be read. But no such case of concert has been made out here; because the only proof or allegation of improper acts laid before the Jury to-day, has been confined, in a great measure, to the acts of the individual at the bar; and there are no facts of conspiracy made out between him and others in those particulars to which the paper refers. And therefore, independently of the fact that this paper is not identified, I submit the delivery over of a folded paper in the presence of the prisoner is not such a presumption and ground of inference as to his knowledge of the contents, as to make it competent to produce the contents, which is different from producing the outside of the paper. If there had been evidence that the contents of the paper delivered to Cook were known to the prisoner, he might be answerable for the contents; but I ask your Lordships whether the paper has been so identified by my learned friend, as, in a trial like this, to entitle him to lay it before the Jury in evidence? It is said it had only been out of the custody of some of these persons one night; that would strike out one link which is necessary to connect, and there is a discontinuance of the chain. Why is not the commanding officer here to supply it? Can any thing be more clear than that which Captain Hodgson stated spontaneously, that he received a paper from Cook, of which he had no doubt this was a copy; and though he had marked the paper now lodged in process here, yet that that paper was out of his hands, but he thought it was of the

same description? That evidence of the identity of a paper is not receivable; nay, recollection of a paper after months is not receivable to prove the identity of the document; and with regard to the fact that it was out of his custody for a day or a night, it is admitting the point out of Court; because unless you can trace the paper without one intermission or interruption in the chain of evidence, it is broken as much as if it was out of his custody a month; therefore it was not so identified as to be capable of being produced to the Jury.

Lord President.—Mr Jeffrey, the Court have considered your objection to the reading of these papers, and they are of opinion that all of them are sufficiently proved to go to the Jury. They are of opinion that, with regard to the first one, which Hardie, the prisoner, prevented Mr Hardie, the magistrate, taking down, he must be held (the Jury will consider how far that is a right inference) to have adopted the whole contents of that paper; for how could a person say he would spill the last drop of his blood to prevent a paper being taken down, the contents of which he does not know? Therefore, the Court are of opinion that the prosecutor could have been allowed to prove it by the verbal memory of the witness as far as it would go. Now, it appears to the Court that the best possible proof of his memory is his having seen a paper, which he believes to be a copy of that paper; then, if they had attempted to prove the contents of the original paper by his paper, while he had admitted that he took down another paper, which he believed to be a copy, and they did not produce it in aid of his memory, his evidence could not be received; but he took down a paper a few yards off, and that is the best evidence of the contents of the original paper; and therefore it is a fit subject to go to the Jury, and they will form such inference from it as they think the circumstances warrant.

With regard to the second paper, the Court is of opinion that it is proved sufficiently to go to the Jury. In the first place, as to the possession of Lieutenant Hodgson, this is proved beyond question, he delivered it to his officer, Colonel Taylor, who kept it one night; and he swears that, in

his belief, this is the same paper. Now, whether it is the identical paper or not, (if it was a manuscript, there might be more difficulty about it,) is a matter that is immaterial, if it was the identical copy which he believes it to be; nay, further, he believes it to be the same paper, and, therefore, under these circumstances, although, if it had been a paper where you could not have a duplicate, there might have been a difference; yet as it is a paper where there may be a duplicate, and the witnesses swear that the contents are the same, we are of opinion it is proved sufficiently to go to the Jury for their consideration.

The Address delivered in by Mr Hardie was read as follows:—

"Address to the Inhabitants of Great Britain and Ireland.

"Friends and Countrymen,—Roused from that torpid state in which we have been sunk for so many years, we are at length compelled, from the extremity of our sufferings, and the contempt heaped upon our petitions for redress, to assert our rights at the hazard of our lives, and proclaim to the world the real motives which (if not misrepresented by designing men, would have united all ranks) have induced us to take up arms for the redress of our common grievances. The numerous public meetings held throughout the country has demonstrated to you that the interests of all classes are the same. That the protection of the life and property of the rich man, is the interest of the poor man; and, in return, it is the interest of the rich to protect the poor from the iron grasp of despotism; for, when its victims are exhausted in the lower circles, there is no assurance but that its ravages will be continued in the upper; for, once set in motion, it will continue to move till a succession of victims fall. Our principles are few, and founded on the basis of our constitution, which were purchased with the dearest blood of our ancestors, and which we swear to transmit to posterity unsullied, or perish in the attempt. Equality of rights (not of property) is the object for which we contend, and which we consider as the only security for

our liberties and lives. Let us shew to the world that we are not that lawless sanguinary rabble which our oppressors would persuade the higher circles we are; but a brave and generous people, determined to be free. Liberty or Death is our motto; and we have sworn to return home in triumph, or return no more. Soldiers! shall you, countrymen, bound by the sacred obligation of an oath to defend your country and your King from enemies, whether foreign or domestic, plunge your bayonets into the bosoms of fathers and brothers; and at once sacrifice, at the shrine of military despotism, to the unrelenting orders of a cruel faction, those feelings which you hold in common with the rest of mankind? Soldiers! turn your eyes toward Spain, and there behold the happy effects resulting from the union of soldiers and citizens. Look to that quarter, and there behold the yoke of hated despotism broke by the unanimous wish of the people and the soldiery, happily accomplished without bloodshed; and shall you, who taught those soldiers to fight the battles of liberty, refuse to fight those of your own country? —Forbid it, Heaven!—Come forward then at once, and free your country and your King from the power of those that have held them too too long in thraldom. Friends and countrymen, the eventful period is now arrived when the services of all will be required, for the forwarding an object so universally wished, and so absolutely necessary. Come forward, then, and assist those who have begun, in the completion of so arduous a task, and support the laudable efforts which we are about to make, to replace to Britons those rights consecrated to them by Magna Charta, and the Bill of Rights, and sweep from our shores that corruption which has degraded us below the dignity of man. Owing to the misrepresentations which have gone abroad with regard to our intentions, we think it indispensably necessary to declare inviolable all public and private property; and we hereby call upon all Justices of the Peace, and all others, to suppress pillage and plunder of every description, and to endeavour to secure those guilty of such offences, that they may receive that punishment which such violation of justice demands. In the present state of affairs, and du-

ring the continuation of so momentous a struggle, we earnestly request of all to desist from their labour, from and after this day, the 1st of April, and attend wholly to the recovery of their rights; and consider it as the duty of every man, not to recommence until he is in possession of those rights which distinguishes the freeman from the slave; viz. that of giving consent to the laws by which he is to be governed. We therefore recommend to the proprietors of public works, and all others, to stop the one, and shut up the other, until order is restored, as we will be accountable for no damages which may be sustained, and which, after this public intimation, they can have no claim to. And we hereby give notice to all those who shall be found carrying arms against those who intend to regenerate their country, and restore its inhabitants to their native dignity, we shall consider them as traitors to their country, and enemies to their King, and treat them as such.—By order of the Committee of Organization for forming a Provisional Government. Glasgow, 1st April, 1820.—Britons! God, Justice, the wishes of all good men are with us—join together, and make it one cause, and the nations of the earth shall hail the day when the standard of liberty shall be raised on its native soil."

Lord Advocate.—Here closes the case for the prosecution, my Lord.

Mr Jeffrey.—May it please, your Lordships, and Gentlemen of the Jury,—I rise now, Gentlemen, God knows with anxiety enough, to discharge what, however, I have always looked forward to as the least anxious part of my task. For from the moment when a sense of duty to my profession, and to the unfortunate persons whose situation has given them a claim upon that profession; and when a sense of obedience to the suggestions of those persons on the Bench, to whom, as a professional, and as an individual person, I owe the highest respect—I say, Gentlemen, from the first moment that these considerations reluctantly, and with great hesitation, prevailed with me to venture on the painful and responsible task, for which all who know the situation in which I have been placed, are aware I had so little time to

prepare, I had considered that task as attended, not certainly with more pain than I have experienced, but as likely to involve me in greater difficulties and perplexities than I have yet had to encounter. But from the beginning I was comforted and upheld by this reflection, that at the most important stage of the proceedings, I should at last escape from the labyrinth of a law, with which, though a part of the law of our own land, I may, without shame, say, my acquaintance was very trifling; for almost a whole century has elapsed without any person having an opportunity, practically, to learn its application in this part of the island. I did trust, therefore, that however much I might be baffled or perplexed, and perhaps in some degree exposed, in struggling with a system of jurisprudence so foreign to my studies, one period of the trial would restore me to self-possession, and give my client some chance of benefit from the assistance a person in my profession could render him. At that period we have at last arrived; when, escaping from all the perplexities of the law, I have to deal only with the plain unsophisticated sense, sound reason, and consciences of a Jury of my countrymen, and with the plain evidence of facts, upon which I humbly conceive there can be little ground for dispute.

Then, Gentlemen, I may begin the short statement which I am in a condition to submit to you, by one comfortable remark, if the case holds out any thing to which that epithet can be applied; and that is, Gentlemen, that as to what is proven, and what is not proven—as to what is the state of facts to which your judgment must be applied, and upon which your verdict must proceed, I scarcely anticipate any difference as likely to arise between the opposite sides of the bar. The whole question, I apprehend, will be, what is the legal, and just, and true import of the facts that are proven? For, after the evidence which has been just now closed, I really think it would be absurd to suppose that any doubt of the existence of the facts could remain in your minds. It is therefore, Gentlemen, as it appears to me, a question merely of the appreciation or application of evidence, and therefore eminently and peculiarly a question for the consi-

deration and the determination of a Jury; and embarrassed, as I have the comfort to feel it, according to my view of the case, with scarcely any portion of legal or technical difficulty.

But, Gentlemen, before proceeding to state, in a very few words, what the facts are which I thus hold to be proven; and to submit to you what are the conclusions which those facts, in my humble apprehension, do warrant; and what are the conclusions which I shall take the liberty of stating I do not think that they warrant, I think it right to begin by an observation, which, to persons of your intelligence and candour, might, I believe, be spared. Gentlemen, you will understand that I am not here to justify the conduct of the prisoner at the bar—I am not here to say, that a great deal has not been proved against him, which infers blame of a very weighty and aggravated description—I am not even here to pretend that *crimes* of a heinous nature have not been sufficiently established against him. The question of his guilt or innocence, *generally*, is not the question that you are now to try—It is by no means necessary for that verdict, which I trust you will ultimately find yourselves at liberty to return, that you should think well of his conduct, or even that you should think that it is not deserving of the highest reprobation and censure. The question you have to try, Gentlemen, is a far narrower and more precise question; and is merely, whether there has been sufficient legal, convincing, and clear evidence, to force you upon your oaths, in spite of the presumption for innocence that is established in every system of law—in spite of the pleadings of mercy, which it is no less your duty to listen to, than to do justice—I say, Gentlemen, the question is, whether you have evidence sufficient, in spite of these considerations, to compel you to say, that there is no doubt that the prisoner has committed the specific and aggravated offence of High Treason.

Gentlemen, great care has been taken, and very laudable pains have been bestowed, from a very early period of the history of that country from which this branch of our law (for it is *our* law) has, at a period comparatively late, been

borrowed, to define the nature and limits of the offence of High Treason. Perhaps it is owing to the novelty of the subject to my understanding, and to prejudices (though I can scarcely allow it to be prejudices,) imbibed from the study of a jurisprudence of a different character, that I cannot say, for one, that those endeavours have been extremely successful. For however much this has been held out as a desirable object, and however much the eulogists of the law of England are in the habit of asserting that it has been fully attained—I must say, looking into the books of the law of England on other crimes, or of proceedings as to such crimes in any other country, I am not aware of any questions of such difficulty as still adheres to the definition of some species and some kinds of Treason, according to the law of England, in its last state of perfection. But, Gentlemen, fortunately for us all, this is admitted to be a case that does not fall under that description. It was stated to you in the luminous, temperate, and reasonable opening which you heard on the part of the prosecution, from the learned Lord Advocate—that this, in his view, did not rank among those cases of alleged treasonable practices, as to the proof, or, at all events, as to the definition of which, any nice questions could be raised, or any reference to debateable authority required; and in that I entirely concur. Gentlemen, I do not think it at all necessary to trouble you with any remarks upon that extension, which, something I think contrary to professions held out in the law itself, has been given to the first article of charge against this person. The leading treason, which is that to which I allude, is that of Compassing the Death of the Sovereign—the definition is plain. From the most ancient times, it has been held, that without an attempt, *in proximo*, to take the life of that eminent and necessary Personage, there was no treason; but any steps clearly and unequivocally tending to that calamitous result, and indicating, not merely the existence of such a wish or intention, but a resolution and purpose to carry it into effect, has, in all time, been held sufficient to constitute the offence of Treason. It is not necessary that the life or person of the Sovereign should be actually assailed, to render a person lia-

ble for intending or plotting the death of the King: and though the principle has been carried something farther than I think it would be easy to justify, it fortunately is not necessary here to go into these, which I cannot help calling, and which the learned prosecutor himself could not help calling, *constructive* extensions; because, in this case, it appears to me that the whole facts of this case come much more appropriately under the charge of Levying War against the King in his realm, than that of intending or plotting to the destruction of his life, directly or indirectly; at the same time, that I unequivocally admit, that a conspiracy or determination to levy war against the King, when that is made out, not in the constructive way in which it sometimes is, by harbouring designs of forcibly effecting general changes in certain institutions under the King's authority; but when it is directed to an actual change in the government, and to the conduct of that supreme magistrate, without whose co-operation the government cannot be altered, and who, therefore, must be *compelled* to give an acquiescence by force, or must be removed from a situation of giving resistance to the schem;—acts indicating an intention to levy war in that way, have been held, and I do not object to the construction, as amounting to sufficient evidence, or overt acts, of a purpose to destroy the King's life; and, therefore, they were, antecedent to a late statute, which has erected them into substantive treasons, considered as sufficient evidence of the guilty object of aiming at the life of the King: But from the evidence laid before you, and from the view that from the preliminary statement we know is taken on the other side of that evidence, it is plain, that the case here is not entangled in such difficulties; for the charge is not only of war being determined on for such a purpose, but it is brought to the highest state of evidence, by the actual commencement of hostility waged, and war carried on; and his Lordship did us no more than justice in saying, he did not anticipate any contradiction or dispute upon that proposition, that the actual levying and waging war within the realm, for the purpose of compelling a change in the administration of the laws and government, by force and vio-

lence; or by such force, and violence, of subverting the government altogether, and establishing some other on its ruins, would be a substantive treason, and must compel you to find the person against whom such acts were proved, guilty of that high and fatal crime. I therefore feel very much at home as to the nature of the charge, and what is required to make it out.

Gentlemen, this case loses all the perplexities from which you and I might have suffered nnder some aspects of such a charge, and some attempts to prove it. As it stands, it results in an ordinary case for a Jury, that of the sufficiency of, and the import of the evidence, to prove a very plain proposition; that proposition being, that there is evidence here, to instruct, against all presumptions to the contrary, that this individual did not only intend and conspire, but did actually carry this intention into execution, by arming himself, and carrying on war against the constituted authorities and regular troops of the King, *for the purpose of subverting the constitution*, or *compelling* the Sovereign to change his measures and government.

Now, Gentlemen, there are two branches in this proposition; the one is, the naked question of fact, as to which, you will be prepared to hear me repeat, that I think no doubt exists; and by affecting any doubt as to which, I feel I should deprive myself of the credit which I hope to maintain with you. I admit therefore, that my client was armed with other persons—that being so armed, he was present at, and engaged, both constructively and actively, in a skirmish with the lawful forces in the pay of the King, acting, I have no doubt, in what they considered, and what probably was, their duty.

Gentlemen, I rather take up the evidence at this point, which is near the end of the transaction, historically or chronologically speaking, than at the other extreme, and removed from it by a long and great interval of time; because I am aware, from what one has heard abroad, and which, in common with that public from which you are taken, you must have experienced, of the startling effect of what, with any but jurors, I would call the prepossessing fact, which

was proved to-day, which was known all over the country, ever since it was first noised and bruited about in the land.

Gentlemen, it may be necessary, after having made this admission, to state to you, not on any subtlety of the law of treason—not on any technical and lawyer-like distinction, which will appear at all strange or difficult for you to follow, but on principles which must be convincing and satisfactory to your minds, though they may not have occurred to you before your present duty required you to attend to such considerations, in the way I see you are now attending to them—that an attack may be made upon the forces of the King, by an armed band of his other subjects, and the blood of both may be shed in a field of unnatural battle, and yet no Treason may be committed; and the proof of that fact may even be no material ingredient of the treason that is here charged, and the treason which is alone sufficient to support the charge against the prisoner. The charge against the prisoner, and what was necessary to make a valid charge of treason against him, is, that he was engaged in actual hostility with the forces of his Sovereign, *for the purpose, and with the intention, of compelling that Sovereign, by force of arms,* to change his laws and government, or for the purpose of subverting the government altogether; leaving, or not leaving, the royalty, for the purpose of some fantastical and new usurpation, to be erected upon the bloody ruins of the former fabric. That, Gentlemen, and nothing else, is the charge; and that, and nothing else than that, must be proved, before we are in a condition to consider this person in danger of a verdict from you, finding him guilty of the charge now exhibited against him.

Gentlemen, the subjects of this realm may commit a variety of offences, of a more aggravated, or a more venial nature, indicated or consummated, all of them, by hostility against the King's forces, and by shedding their blood; and none of those offences can, by possibility, be ranked in the class of Treasons at all. There may be in the mind of a man, or any number of men, or at least of any moderate number of men, a great hostility to a particular body of the King's troops, or perhaps to the whole array of the milita-

ry, from opinions, from grudges, from real or imagined wrongs or injuries, sustained at their hands—They may be assaulted in revenge—persons may have been detected in crimes, and led to justice—arms may have been found in their houses, and confiscated, and themselves convicted and punished by military law, or military despotism; on that account, they may attack those who wear the same uniform as those who detected them,—out of revenge, and be guilty of great crimes, undoubtedly,—but not of the crime of Treason. Such instances occur every day; bands of men engaged in pretty extensive combinations, for the furtherance of unlawful objects that are pretty widely pursued, in a neighbouring country. In Ireland, and in this country formerly, and not long ago, there were encounters between the King's forces and persons engaged in Smuggling; they have been familiar and common, and much blood has been shed in these occurrences. Aggravated crimes they are, when it comes to slaughter, and great crimes when there is no slaughter; but not approaching to the verge of Treason. Other cases occur familiarly; if persons have committed felony, and are flying from justice, if their numbers are great, the aid of the military is called in, in support of the power of the law, and if those persons resist the military and civil power united, they commit great crimes in so doing—crimes fit to be punished, and regularly so, by the application of the proper laws; but never imagined to approach to Treason, which yet, we are apt to hold, is sufficiently proved, when an attack of the King's forces is proved.

Gentlemen, I have stated to you what I think you must now be convinced of, that the evidence of an actual skirmish between any set of armed individuals and a body of the king's forces, acting in the discharge of their duty, is not of itself evidence of a treasonable purpose; because it may exist, and, I believe, in the far greater number of instances in which it has occurred in this country, it has existed, where there is not the least shadow of pretext for imputing that greatest of all crimes to the persons. I believe no case is so common as that of persons who have been engaged in criminal practices, and are flying from justice, before trial, or who have

escaped from justice, and for whose apprehension military power is properly and generally employed, the resistance of those persons to the military, acting in aid of, and along with, the civil authorities, is not in itself a crime at all akin to the crime of Treason, but ranks under a category of its own. If homicide follows, that is a circumstance of aggravation; but brings it no nearer to Treason than it was before. And therefore I may say, that whatever the *other* parts of the evidence may ultimately force you to think was the true character of what took place at Bonnymuir, the proof of what did take place there, taken by itself, is by no means sufficient to entitle you even to suspect the prisoner of High Treason. Because, I need not observe to you, that, whenever an act is at all of an equivocal or doubtful character, it is the duty of a Jury to hold, and it is the presumption of law, that the guilt belongs to the least aggravated view of the case; and, therefore, actual conflict with the forces of the King, although by armed men, and obstinately and desperately pursued, is not even *prima facie* evidence, or presumption of a Treasonable intention: and if nothing else is proved, is not the least ground for a charge of that kind against the party, and ought to be referred to the more common occasion for such a lamentable occurrence. In order, therefore, to make out this crime at all, there must be evidence, either by antecedent, or by subsequent acts, of that *Treasonable purpose* which is the result of the guilt, and by which, if established by acts properly distinguished as overt acts, the guilt would be complete without the actual striking, and without the actual conflict. That, no doubt, would afford an overt act, which would receive an unequivocal character from the proof of the purpose and intention. But so far from holding this transaction at Bonnymuir, which is qualified to strike the imagination or the feelings of the public at large, I say, so far from its being sufficient proof of a Treason, I do maintain, that the crime must be proved in your estimation, *before* you are entitled to consider what took place there as any material article of charge against the prisoner at all; and, therefore, so far from its being a separate act of Treason in him, it is one you need not look to

in order to prove the Treason; because the treasonable purpose must be sufficiently made out by other circumstances before you are entitled to give to that affair the character of a treasonable assault, or a waging of war; and if it be proved only as a crime which admits of a distinct nature as to punishment or guilt, it is then an indifferent matter to the guilt or innocence upon this issue of the prisoner now before you: And therefore, Gentlemen, not only the most material part, but, in my view of the matter, *the whole* of the case turns upon the other circumstances put in evidence, and upon the question, whether those do afford sufficient convincing proof that that armament, that that meeting with armed men which I admit to be proved, that that use of the weapons which I admit to be used, was assumed or persisted in with *a treasonable purpose*,—that is, with a purpose by force and violence to compel an alteration in the measures of government, or to subvert the government entirely; therefore it is to this branch of the question, and to this question only, that we must address ourselves, and with this view, almost exclusively, that you will now be pleased to take into consideration the evidence.

And here, Gentlemen, although for your information it cannot be necessary to state it, it is necessary that I should mention as a material basis of the views of argument I humbly propose to submit to you, that it is a fact too notorious to require any proof, and too lamentable to escape the recollection of any one, that for a long course of time anterior to the melancholy transaction which has this day been put in evidence before you, that class of the community to which the prisoner at the bar and his associates confessedly belong, have been subject to great sufferings and privations. I believe I may also say, that it is matter of equal notoriety, that those sufferings were, for a long course of time, although, unfortunately, not to the end, borne by that class of persons not only generally, but, I may say, universally, with unexampled patience; and that it is a lamentable feature of this, and of many other cases of a similar, and of a different description, with which the courts of criminal jurisprudence in this country have lately been, and are still throng-

ed, that the result of that long period of suffering has not in the end been equally honourable to the character of those who were subject to it, as at the first there seemed good reason to expect it might be. Gentlemen, I am sure you will not suspect me of stating this to you as any species of defence, or apology for crimes like this now charged against this prisoner, if they are proved; or for any other species of crime that is actually committed—guiltily, undoubtedly, although under the influence of such painful and deplorable circumstances. Undoubtedly, Gentlemen, although a man be driven to steal by excess of poverty, it is not the less theft; and if the poverty is general, perhaps it is only the more necessary that the vengeance of the law should be let loose against his thieving; and if you should be satisfied, as we must all in general and in a large view be satisfied, whatever we may think of any particular case, that much of disaffection, much of sedition, much of disorder and alienation from their duty and allegiance, has unfortunately characterized the times that lie but little behind us, though much of it must be referred, and ought in charity to be attributed, not to any sudden depravation, but to the operation of circumstances of an intolerably grievous nature; yet no lawyer, and no man, can say, that is any reason why those crimes should not be pursued, and why additional severity ought not to be employed to counteract the incitements and tendencies to guilt that arise naturally under such circumstances. And nothing can be more abhorrent to my thoughts than to say, that that is any ground for a Jury not to apply the law, or for those who administer the law not to give effect to its vengeance, to repress crime in the season when the example is most likely to be contagious. Gentlemen, I do not state it either for that purpose, or for the vain end of disclaiming that purpose; but I think relevantly, and in a view that is entitled to your serious attention, as bearing on this case, as affording the more likely, and more merciful and humane interpretation of acts, that would otherwise receive a severer construction. For if, in such a period, crimes not defensible are likely to be committed, all these acts of resistance of the military power are more

likely to occur; and when they do occur, great care should be taken to ascertain whether they are Treason, or offences of a different nature from Treason; and we all know, that during the distress that has prevailed, there was a plentiful and lamentable harvest of such offences, totally distinguishable from Treason, but leading to the same acts of resistance to the police and the regular order and general force of the law in this country, which may in some cases indicate a treasonable purpose. We know, that the distresses in Glasgow indicated themselves first by that which continued to the last, I believe their fundamental and general cause,—I mean by a Combination of workmen for an increase of their wages. That is an offence punishable, and recently punished, by the criminal law of this country, in transactions in which a great part of the individuals now arraigned here were directly engaged, or indirectly concerned. After a time, the discontent, the mutinous and combining spirit that originated as a mere disorder in trade, and partook of a far milder and less aggravated character than belongs to any public offence against the state, and had in the beginning nothing in it of a political offence at all, undoubtedly received additional violence by imbibing some portions of political animosity. Then another offence came to be combined with these dispositions, and, Gentlemen, the crime of Sedition reared its head in this formerly loyal and tranquil land.

Gentlemen, the records of our criminal Courts, events that every man has heard of in every corner, have taught us how many prosecutions, how many arrests, how many alarms, were propagated by Seditious assemblies, seditious discourses, seditious libels and publications; and, Gentlemen, nothing was more natural, after these assemblies, these tumultuous meetings had become common, than that they should lead further to the commission of that which hungry multitudes are so apt to run into, pillage and plunder, and indiscriminate attack on private property. Now, Gentlemen, it is in this state of things that you are called on to find that certain persons, who went armed about the country, and resisted an attempt to arrest and make prisoners of them, must necessarily, and in consequence of that act, be

held to have been so raised, and so armed, and so marching, not for the purpose of defending themselves from being brought to justice for any of the minor offences to which I have alluded, not to protect themselves in the continued career of committing those offences, but for the purpose of waging War against the Government of the country, and arming themselves to subvert the Constitution of the country. Gentlemen, I say in such circumstances a general view of the case would lead to the more merciful, as well as by far the more likely and probable conclusion; and that, when so many other more natural and more feasible purposes of such arming can be pointed out in the circumstances which confessedly belong to the persons accused, it will require clear and precise evidence to satisfy you that this conduct must be connected with a Treasonable purpose, and cannot be accounted for by any other circumstances of probability, such as are suggested by the real circumstances in proof.

Now, Gentlemen, with a view to the evidence in particular, of which I think this is the general description, let us consider to what it amounts. There has been reference made to a hand-bill, of a very abominable description; and as to which I cannot say that I feel myself called upon to dissent from the epithet that was applied to it on the part of the prosecution—I think it was a Treasonable hand-bill. Allusion has also been made to meetings of persons called Radicals; and allusion has been made to expressions said to have been used by others, in the hearing of the prisoner, of a purpose or desire to obtain what they called their rights: and these things, as they have been said to be brought home to the prisoner, with some others, seem to be relied upon as sufficient proof that these suspicious, these illegal, these criminal acts, which I admit are proved against him, must necessarily not only have been illegal and criminal, but also Treasonable; and that there is evidence sufficient to force on a Jury, bound to presume every thing for the prisoner, the irresistible conviction of his guilt—and absolutely to exclude us from putting any other interpretation on his conduct than that he was armed for the purpose of employing his arms to compel a change in the constitution, or to effect a subver-

sion of the government and the regular establishments of the country.

Gentlemen, if that hand-bill had been brought home to the prisoner at the bar, as a person concerned in its concoction—if any evidence had been laid before you that he had been a party, or a member of a committee for organizing a provisional government—if any expression or speech had fallen from him, deliberately uttered, advisedly and repeatedly uttered—for I think it would require that—approving the tenor of that publication, with evidence that he understood the tenor of it when he did so approve of it,—why, Gentlemen, I must confess that I should tremble for his fate; and in spite of my reliance on the mercy with which your justice would be tempered, I should scarcely dare to lift my eyes to ask what your justice might have been called upon to pronounce. But, Gentlemen, is that the case here?—Is there any evidence, in the first place, such as, I confess, I expected, and I think was prepared to rebut—Is there any evidence that this individual had, for any course of preceding time, been engaged as an active reformer, or a meddler in politics at all?—Has it been proved that he was the hearer or maker of speeches at any radical meeting, or a zealot for annual parliaments and suffrage by ballot, or any other reform?—Has the prosecutor thought fit to go back so far as to satisfy you that, upon whatever motives he acted during these four days, those motives were even deliberately considered, or formed any part of his settled opinions, or the rule of his habitual conduct?—Does he select his first victim on account of the aggravated and peculiar and prominent features of his offence, and yet is he unable to shew that he belonged to that class of persons with whom, undoubtedly, the greatest and most unexpiable guilt must rest, by whose machinations, by whose stimulating poisons, the mass of the ignorant population has been infected? Here there is no foundation laid for the belief of a treasonable purpose; for that, like all other fixed purposes for which persons are to be responsible with their lives, ought to be shewn not to be abandoned after a few days, but that the mischief was ripe in the country for years before; but there is no attempt to trace this

man back one step beyond the brief period during which his conduct has been put in evidence before you to-day.

But, I say, while you are bound to free the prisoner, from the utter want of evidence on the point of all participation in these plots and conspiracies, and these committees, and meetings, and associations, from which this pernicious and detestable hand-bill originally emanated, I admit, if you could fasten on him the adoption of that hand-bill as his creed, with evidence of his understanding it, however much it might be regretted that punishment could not find its way to the most guilty, it would be impossible to say sufficient had not been proved against this party. But how do we stand as to this? Their Lordships have found that it is so proved in the circumstances of the case, as that it may and ought to be read to you; and of course you must take it as a part of the evidence laid before you; yet their Lordships neither have, nor can be imagined to have found, any thing more. They have not found that that hand-bill is a paper, for the contents of which my client is responsible; they have not found that there is any evidence by which his approbation of it is sealed; indeed, it does not belong to the Court so to find—it belongs to You, and you only, to find that; and their Lordships never intended to prejudice that question. Now, Gentlemen, what is the evidence?—I am unwilling to resume any part of the discussion, which you heard lately laid before the Court, or to ask you to form a different opinion upon any of the points upon which the opinion of their Lordships has been delivered to you; and, therefore, I shall not enter into the question of how far there is sufficient evidence to satisfy you that the two hand-bills, with which it is said that the prisoner at the bar has been connected, were actually of the tenor of the documents upon the table, which have been sent to you as evidence; but I do submit to you, in one word, that neither of them are sufficiently proved for you to proceed upon. That is an established fact, in proceeding to consider the import of the evidence laid before you, though I am bound to bow to the decision which has been formed, that they have been so far proved as to entitle you to form the conclusion which

shall appear to you to be deducible from them; I say, there is no legal evidence that the hand-bill now produced by Mr Hardie was of the same identical tenor with the hand-bill of which a copy was seen by him; it is not proved to be of the same tenor as that the prisoner was found hearing read to him: you are the judges of that. I may admit, as a rule of law, that though it is sufficiently proved to send it to a Jury, it is not sufficiently proved to entitle a person to say, from recollection, that it is an exact copy of that paper, which alone can affect the prisoner. The only paper which can at all touch the prisoner, is that which he is proved to have personally heard read. Now the contents of that paper are not in evidence before you, nor any copy compared with it, of the identity of that paper with others. I submit, in a court of criminal justice, you cannot hold identity to be established by the circumstance that it struck the witness as being the same. That is not legal evidence of identity; and you cannot take it upon you to touch the life of a fellow-creature, upon grounds so precarious.

Then, again, what is the fact with regard to this hand-bill? Why, Hardie, the prisoner at the bar, is proved, I think sufficiently proved, to have heard a part of it read—but only a part of it; and unquestionably there is not the least evidence that he heard the part that followed that to which the witness spoke, and necessarily confined his deposition,—or that he either himself read, or heard the subsequent part read at all. But supposing it were ever so clear that he had heard it read four times over from beginning to end, deliberately and distinctly, is it possible to maintain, that hearing a seditious paper read, or reading a seditious paper in the public streets, where all passers by must read it, is enough to involve the party who reads it in a seditious approbation of its contents? You, and thousands of loyal subjects, may have read it under the same circumstances. His reading a part is absolutely nothing, as to connecting him with the whole of it, or fixing him with its tenor, as any exponent of his sentiments or opinions.

But then we are told that his conversation with the respectable person who was naturally struck with horror and

it word by word in the conclaves of our associates, just as Hardie and his associates were reading it then?—There were words, the Doctor said, between Mr Hardie the Magistrate and some of the other people; and there were, it appears from Mr Hardie, but he says he cannot recollect more than he stated, that he insisted on taking the paper down; and this rude person, in all likelihood, not having a command of temper, was angry that he should be interrupted, and said, I will be damned if you take it down. You shall take my life's blood sooner. That was, no doubt, a violent observation; but if a man is once defied and comes to the heat of blood arising from scuffling, we all know the indecorum to which he may be hurried; and I ask, whether, under these circumstances, you can hold that that language can in common sense, to say nothing of humanity or law, be received by you as a presumption—though you have nothing to do with presumptions, and ought to discard them with resentment from your minds—can that language afford any sort of evidence that he knew more than he was then hearing, or that he approved of, or understood, what he actually heard? I do submit there is a complete failure of the evidence on this point, and that it would be the most tremendous of all constructions of evidence, worse than any construction of treason ever attempted, to convict a person of a capital crime on such a foundation as this.

Gentlemen, I say there is not a particle of evidence with regard to his adoption or approbation of that paper, and that every thing that occurred, not only may be explained consistently with his not approving, and not understanding even that part which he heard, but in common sense, considering his condition of life, it is by far the most natural presumption; and if the favour were the other way, you would naturally and necessarily adopt it: And therefore I cannot too much caution you in the outset against allowing your minds to be poisoned by listening to any suggestions of this kind, in viewing that legal, and pure, direct, or circumstantial evidence, by which only you can find a fellow-creature guilty of the tremendous offence charged against this unhappy man to-day.

Then of the other hand-bills I have still less to say, before I dismiss them altogether. You have heard it proved that this unfortunate man was on the road, not laudably, I fear, nor innocently employed, but I say, not proved to be treasonably employed, along with five or six other persons, when they met this serjeant, whom you saw examined to-day; and there a person, who I think it is admitted was not the prisoner, did pull out of his pocket, after some conversation, a parcel of papers, and gave the serjeant one of them; which, it is said, has been proved to be another copy of the same hand-bill. I say, in the first place, that this is not proved; that there is a fatal and unsuppliable link in the chain of evidence, by which it ought to be connected with the person who gave it to Cook; and, therefore, if that person had been the prisoner, it would not have been a crime, because it is not proved to be the same with the one now produced. Evidence, from recollection of similarity of tenor, is not receivable evidence in any crime, much less in the highest crime, where the proof is most difficult, and required to be most complete. But, Gentlemen, supposing the bill to be traced from the hand of the prisoner to Cook, how is that better evidence than the other of his approbation of its contents? I put it to you not as persons who are bound to listen to quibbles and legal distinctions, but I put it to you on the principles of common sense, as applied to evidence of simple facts, whether the delivery of a folded paper by one man shall amount to evidence against another person then present, that he has a knowledge of the contents of that paper, and approves of its contents and circulation.—This person takes a bunch of them out of his pocket, and gives one folded up; can any thing be so hazardous and full of peril to all men who may be in evil company, if they are to be answerable, not only for what they see done and approve of, but for what may be done, in one sense, in their presence, but which is not done at all with reference to them? It is the knowledge of the contents of the paper that constitutes the whole guilt; and though the paper is handed over in the presence of another, you have nothing to found the presumption that a person merely present, of whom it

is not proved that he saw the inside of it, is to be loaded with the whole sealed up volume of guilt, which is not unsealed in his presence for an instant. Gentlemen, the maxim of law, that a man, if he sees a thing done in his presence without disavowing it, is liable for the thing so done, is a hard maxim in some circumstances. Some men from fear, and others from inattention, may be present at words spoken and acts done, which they ought to dissent from and disavow; and though they have had the purpose and inclination so to do, may, from inattention or stupidity, be prevented from doing it. I say, it is hard they should still be made jointly responsible with the actor or speaker; but if they are to be answerable for sealed papers delivered over in their presence, there is no end to the injustice that may be done, nor any limit to the anomalies and perversions of law that may follow. A plot against the man himself, a treasonable or murderous scheme against a man may be handed over to a person in his presence, and he may thus be held accessary to his own condemnation—what limit is there to that presumption? I ask you if you think there is any evidence to fasten on the prisoner the guilt of that paper, or any intention to approve of the paper, by the circumstance of a folded copy of it being passed from the pocket of one man to that of another, who carries it away?—and yet that is the whole evidence with regard to his connection with this paper, with which, it is said, he is chargeable, and of which, it is said, there is evidence of his approbation and adoption. If you think that is evidence, I own I should be less inclined to congratulate the country on the institution of which you form a part, and less willing to trust my client to your decision; but I will not believe it is possible; and, I am persuaded, that you never will hold that this hand-bill is to be brought against this individual, farther than as proof that it was posted in two places in Glasgow, and that he had read it before he left the place; but that he took any step connected with it is a matter of the loosest inference, and is not rendered even probable by any of the circumstances given in evidence to-day.

Then, Gentlemen, what are the other circumstances? I

really am not aware that there is any of any formidable or considerable nature, except the statement contained in the prisoner's own declarations, that have been read to you; and, Gentlemen, it is always most painful, I believe, to the prosecutors, and I am sure it is to a Jury, when any material and necessary part of a man's guilt is brought out by his own, as it must turn out, most imprudent, and perhaps inaccurate expressions and declarations.

Gentlemen, such declarations and admissions are usually receivable evidence; but they are far indeed from being conclusive evidence, and I rather think I may say, that unless where they connect facts that are proved by extrinsic evidence, though they may be allowable, it is hardly adviseable to rely much on them. Why, Gentlemen, the most solemn and complete of all admissions, I believe, is hardly ever stated as evidence, and certainly never considered, or dwelt upon in evidence, in the case of a trial for crime—I mean the confession of the prisoner himself, in the presence of the Jury or the Court, although deliberately made, if ultimately, and in time, he withdraws and retracts it. Such is the humanity of our law, that it allows a plea of Guilty which has been put in, upon re-consideration to be withdrawn; and the fact of that plea having been entered, though the most solemn admission of guilt that can well be imagined, I believe, in practice is never urged or referred to as evidence of guilt at all, in summing up the proof; yet of all confessions it is the most complete, and ought to be of the most unequivocal and decisive authority. I state that to you as an ordinary illustration; but you must be aware how repugnant it is to all those feelings with which the administration of justice ought to be tempered, and without which it would scarcely be justice for human creatures, that the elements of a man's condemnation, who does not intend to plead guilty, should in any case be extracted or construed out of statements that are obtained from him before a Magistrate, or otherwise.

But, Gentlemen, one would apply this caution with infinitely greater, and in this case, I think, with decisive strength, to that part, which is the only part of the declaration, that

I think is material, in which an avowal of the purpose of this armament is taken down. It is said he armed himself in order to obtain a reform in Parliament, or some such thing, or with a view to obtain a reform in Parliament. Now, Gentlemen, considering how these examinations are taken, I think it cannot be held that these were the precise words the prisoner uttered; and in a matter not of naked fact, but of opinion, and relating to notions of a political kind, I scarcely think it allowable to give a statement of the objects of a man in such concise terms as these, and then to catch at such expressions as decisive of guilt, which would not otherwise settle on him: For while the declarations as to matter of fact may in general be safely received, the expression of opinions or motives, which are always imperfectly given, and are always modified and retracted on farther investigation, ought not to be clapped down in two lines, and no questions asked in explanation. I impute no blame here to the magistrates. I am sure they act most conscientiously; but that is not the mode of proceeding in this country. What the expressions are I really do not care, but they plainly admit of an explanation, and an explanation with the statement of which I shall conclude the general observations I have to make to you, and nearly finish all I have to say.

Gentlemen, I have very little doubt you may think it probable that the arming of these men, and their marching from Glasgow, had some connection with politics and with reform, and I do not think more can be inferred from the statement in the declaration; but there is a wide step to be taken from that to an admission, which the subsequent and preceding parts of the declaration negative, and you can never suppose that he intended to contradict himself, that he intended no violence to any body, and that, in point of fact, the speculations about Annual Parliaments and Universal Suffrage, were afterwards explained to be what he had heard other people say; but he had hardly any opinion on the subject himself, not being in the habit of attending much to such subjects, which I think you are bound, in the absence of evidence to the contrary, to believe was the case. Now, Gentlemen, very grievous offences may be committed by persons en-

gaged in the pursuit of such a reform, as appears to have been in favour with this person and his associates; but, Gentlemen, I think a great proportion of this, and all that is necessary to suppose here, may be supposed, without involving him in the guilt of Treason. The statement he gives is substantially, that he went out, having no purpose of hurting any body, to bring in other people who were friendly to the cause to Glasgow, and that he took arms for this and no other purpose. I am aware this is treading on dangerous ground; but the case would be different in that view of it from the view the prosecutor takes here;—if it was merely determined to hold a meeting of a tumultuous nature, to have a petition drawn up at a great radical meeting, and determined also, that if the military, or police, come to disperse them, they would use force to prevent their dispersion. This is the worst view of it: and this will not amount to Treason. But all that the declaration says is, that they intended to go and tell the people in the country that the cause was going on, and if they would come and make more noise, and make it appear that it is the general wish that such reform should be granted, we think it will be granted; and that the prisoner therefore went to get a large number to petition, and went armed on this recruiting service to prevent the interference of the police.

Gentlemen, this is a high crime: but it is not Treason, undoubtedly not the Treason laid here; for it is a very different thing from a person arming himself, on purpose, by active force, to overwhelm the government. If a man arms to protect himself, it may be an illegal act, if the act in which he is so to be protected is in itself illegal. But if the resolutions, and the petitions, and the speeches of the convocation of persons had been carried through, they would only have amounted to the crime of sedition; and if upon any attack made upon them they had resisted, that would have been only a riot, not a treasonable waging of war. I admit fully, at the same time, that there is no distinction between a person saying I am not armed to overthrow the government by force, but only to defend myself against those who prevent my overthrowing it peaceably. But if I am

only collecting meetings without proof of their intending any such overthrow, that is not Treason, and resisting dispersion there is not Treason. I do not go, therefore, upon the shadow of a distinction between active and passive force; but there must be evidence that it was intended to commit that which was Treason; and resisting the dispersion of a radical or seditious meeting is not Treason. If smugglers are pursued by soldiers, who are employed to arrest them, it is a riot to resist, but it is not the crime with which you and I have to do to-night; although it is resisting lawful authority, although it is waging war against the King's forces in the performance of their duty, in preventing the execution of a criminal and improper purpose then a-foot, and then following out by the persons engaged in it. In short, where the purpose is not strictly treasonable the mere assisting in maintaining that purpose by force, although a heinous offence, although involving the party in great crime, is not Treason, unless the purpose was a treasonable purpose, which it would be impossible to say in many cases it would be, though they were regularly armed.

Then, Gentlemen, I have only to bring you to the ultimate view of the case, and see how it corresponds with the supposition of its being Treason, or the supposition I submit, that it was merely for the protection of an illegal and criminal, but not a treasonable purpose. Why, Gentlemen, I do not say that the inadequacy of the force is of itself evidence, where there is clear proof of a treasonable purpose, or an answer to the proof that a levying of war took place. Desperate causes will have desperate votaries and advocates, and persons very often appear devoid of that understanding, by which alone their conduct could be ultimately formidable; but when you see them going with arms to protect themselves, and with such numbers as to render the idea of waging war absurd, the inadequacy of their force is then a most decisive and important feature in the cause. Gentlemen, it is very remarkable that there is no evidence of their having addressed any body to join them in subverting the constitution; there is no evidence of their applying to any body to enable them to compel a change of

government; there is no evidence of their having adopted any of the other purposes in that hand-bill, or of its coming from the mouth of my client, or any person in his company. They took arms on the road, and had conversations about their rights, but they never said they were to work out their rights by force, or to apply their arms but for their own protection. It is supposed they went out in obedience to this proclamation, and in particular the part which relates to the soldiers; and yet you are asked to believe that that party which was to seduce them were the actual aggressors in this hopeless conflict. But what do they do, according to the statement of the other party? They march, *avoiding* all interference with those whom they want to overthrow, by sneaking along the canal; and when their object is frustrated, they go to a desolate part of the moor, where there was nobody to conquer, but where they go to hide till they could steal back again to the city from which they had come. Does this shew that they intended to compel a change of government? or is it not referable to the minor offence of going out to escort a body of reformers to what may be called illegal meetings, where seditious speeches were to be made, and absurd, ridiculous, and pernicious resolutions come to? What reason have you to suppose but that they were armed against the police, which had threatened their dispersion; which would have been a riot, but certainly would not have amounted to Treason.

Gentlemen, that is the way they were found; and let us see a little more particularly how this unhappy catastrophe was brought about. They met a person on the road, and one of them asked for his arms; they were not very resolute, for they allowed the man to walk away unhurt in his person after a little parley. Then they encounter a hussar; they stop him, and one man asks for his arms: that was stated to you distinctly not to have been the prisoner at the bar; it was stated to be a person who was in the battle, who he thinks escaped, and is not in custody at all. Now, there is no proof of that being done for a common purpose, for another man of the party interposed, and said you shall not take his arms, and it was carried so; and

therefore you are not to attribute the proposed act of one as a common act in which the others are involved, when it appears clearly that they dissented. They have a colloquy with him, and he counterfeits an affection for their principles, and sympathizes with them for those distresses which he sees are the probable cause of their melancholy speculation, which would be ludicrous, if it were not for its example, and the consequences it has brought on its authors. The hand-bill is then given to Cook, and word is carried to the troop at Kilsyth that armed men are parading the country, and a party is sent out. I do not mean to arraign the conduct of those persons; but I think there is rather scanty evidence to warrant their taking these men prisoners. I have no doubt they acted honourably, and with use to the public; but it was without authority, and all that had been seen were six armed men. I think that was too equivocal to justify a war on the part of the military; but I do not dwell on that. The important thing is, that this troop sought the party, and the party did not mean to seek the troop. It is evident that their object was escape, and the object of the troop was apprehension and seizure. That is pretty manifest from the way in which they came forward; and therefore, Gentlemen, what position were these men placed in, acting, I think, wickedly and foolishly in the highest degree: but I do submit to you, from their conduct in this stage of the business, as well as in all the former, not proved to have been acting in furtherance of a treasonable object.

It is clear, beyond all possibility of dispute, that when the military came in sight, their acting was in self-defence, and not an invasion of the troops to overthrow the government. It was in order plainly, and for no other purpose than to prevent their apprehension and seizure by a body of armed men, that they made resistance. From the panic which the sight of these soldiers threw them into, it is quite plain, and no man of common sense can view it otherwise, that this was not a voluntary aggression on their part, but was a mere resistance of persons in an attempt to apprehend them for what they had before done; and if

they had not before committed Treason, the whole conflict on the field is referable to the mere fear of arrest by questionable authority. Nor can it be denied, that men coming up at a hand gallop, and brandishing their swords, might naturally inspire them with fear, that instant violence was intended, and that they had no resource but in a desperate resistance—though, if they had known who commanded that troop, they might have been assured, from his aspect, they would have met with protection and quarter, which all their violence could not induce him to refuse. But, Gentlemen, they did not think so; and in their rank of life, and with their feelings, and their diet of whiskey and porter, which was the diet of the preceding night, it is not to be wondered at that they should act with violence. But that is not the point; the point is, whether the history of that onset affords any evidence of a treasonable purpose, if it is not proved antecedently by preceding acts? And I say, without a shadow of doubt on that point, that if you are not satisfied that they were guilty of High Treason before, that was not an act of High Treason. It must have been consummated before, if that act is in furtherance of it; nay, if it is held to have existed before, that was not an additional act of Treason; and if you think it existed before, it is only upon the overt acts, constituting that previous treason, that you can now convict. You cannot believe the actual conflict to have been undertaken from a treasonable motive; their motive was to all human sense, and every man must see and feel it, a desperate attempt of a parcel of men surrounded, to escape from apprehension for their former conduct; and if they had been treasonably employed before, their acting then was merely resisting their apprehension, a case which cannot be stated as an act of Treason; but if they had been guilty only of a minor offence, and if any thing else was the amount of their guilt, and they went out to protect themselves from arrest, it may be illegal and criminal, but it is not treasonable. I say, the resistance to this alarming arrest, and the resisting the officers of justice, is not an act of Treason; and therefore, Gentlemen, great as the popular aggravation is that the

case receives from this act, I end my statement of the evidence by repeating, that unless you are satisfied from the other parts of the case, that there are sufficient indications of a treasonable purpose, you can receive no evidence of that Treason from the events of that field, and that the Treason, if it existed, must have been complete before, and could not be created then.

Gentlemen, I have said a great deal more than I am afraid you have had the patience to listen to, or than with more preparation, or a juster application of the evidence, I should have thought it necessary to trouble you with. I dare say, tedious as my address has been, many matters of importance have been omitted; but I cannot at this time tax my strength or your patience by any recapitulations of the evidence, or any glancing at the heads I should have submitted. I leave this prisoner and this case in your hands; confident that you will require no suggestion of mine, to remember not merely the general deficiency of evidence to which I have alluded repeatedly, but that you cannot forget or be inattentive to the pleadings of that inward advocate, who not only does plead in the hearts of all humane and just and generous men, but whom the law recognizes as a legal and weighty advocate, even in questions of strict legal construction, and in all questions, especially where the actual truth of human *motives*, and the true state of that unsearchable heart, the ways and movements of which can never be completely disclosed to any human eye, are a part of the materials on which a verdict of condemnation or acquittal, in a case of life and death, must depend. The facts are clear and indisputable—I have not disputed them—I trust I have not misrepresented them. The whole question is as to *the purpose and intention* from which those acts proceeded, and which they were intended to accomplish and fulfil, if they had been allowed to be persevered in. This is a question, therefore, as to motives and designs; the determination of which, though difficult, Juries are obliged to undertake; and to which, if they proceed divested of party feelings, and with a merciful inclination towards the accused, I am satisfied they will not go wrong. I say, if along with a zeal for the con-

scientious discharge of their duty, they take with them those humane and merciful considerations, for the sake of which the establishment of trial by Jury, and the committal of the life of a fellow-creature to the care of twelve simple and uninstructed men, has been so honoured and admired, the result must be satisfactory to all. To attend to those considerations, Gentlemen, is not only your privilege, but your duty; and it is merely because it is so, that trial by Jury stands so high, and is canonized as the greatest of all blessings, and that without which, the most perfect laws would deviate into harshness and cruelty.

Gentlemen, I cannot but think, that now that the alarm, and the immediate danger is over in the country, we shall have a fairer chance than at an earlier period; you will look more to the merciful considerations that may induce you to be satisfied with the exposure already made, and to construe what is equivocal with that favourable leaning and bias towards mercy which the law expects and requires at your hands, and from the consciousness of having exercised which, to your latest days, you will receive more pleasure than if you should act a Roman part, and decide, on a nice point of evidence, to sacrifice these unfortunate individuals, who are already, by a forfeiture of esteem and respect, to be considered as the victims of those deeper and more wicked designers whom the law has not yet overtaken. I think your feelings will be different, if, in after times, you pass by their dwellings, and instead of meeting with the tearful countenances of their orphans and widows, you there find the men themselves reclaimed from the disaffection with which they may have been tainted, redeemed from that peril on the brink of which they now stand, and enabled, by their reformation, to return to the exercise of an industry which is beginning to be better rewarded, and to bring up their children and their children's children to admire those Courts and those Juries who have administered the law in mercy, and have acquitted, not indeed from a general imputation of guilt, nor stamping on them any badge or signal of approbation, but merely negativing the precise charge which is before you, and taking advantage of the flexible nature of

the charge on which the conviction is demanded, refusing that conviction which might perhaps be reasonably granted, but which would be now far more wisely and generously and beneficially withheld.

Lord President.—Have you any witnesses to call?

Mr Jeffrey.—The witnesses were chiefly to character, and to some circumstances in the earlier history of the party, which do not now appear to us, from the way the evidence has been conducted by the Crown, to be material to the defence, and rather than prolong a trial which has already occupied so much time, we do not call for it.

Lord President.—Judge for yourself, do not talk of time.

Mr Jeffrey.—We are sensible of your Lordship's indulgence; but we will not call them.

Lord President.—Does any other counsel of the prisoner wish to say any thing?

Mr Hunter.—No, my Lord.

REPLY.

Mr Solicitor-General.

May it please your Lordships,

Gentlemen of the Jury,—I have now to claim a short period of your attention, while I discharge the concluding duty of the public prosecutor, a task which I rise to fulfil, not so much from any conviction of its necessity in a case which, in all its bearings, is so perfectly clear, and which, in the proof, has been so conclusively established, as to obey the ordinary practice in cases of this kind.

Gentlemen, before proceeding to call your attention to what is the proper subject before you, by adverting distinctly to the law which you are sworn to administer, and to the proof, which it is a still more important part of your duty to take into your consideration in reference to that law, I trust I may be permitted, in a single word, to advert to that very powerful appeal with which the learned counsel,

whose appearance here is honourable both to himself and his profession, concluded his address; that appeal was made to your mercy, and it was made in terms, which, if it has had an impression on you in any degree similar to that which it made upon me, could not pass unregarded. But I conceive it to be my duty to recal to your recollection, that the prerogative of mercy lies not with you. If in this case mercy is fit to be shewn, you know where the constitution of the country, which you are bound to observe, has lodged that sacred prerogative. It is surely unnecessary for me to remind you, that that prerogative is neither intrusted to you nor to the Court. The Court is sworn to administer the law inflexibly as it is written, and you are sworn to administer the law as it applies to the facts proved before you, with a similarly inflexible regard to the obligations of the oath under which you are assembled; and of this you may be assured, that if mercy is fit to be shewn, it will not be refused in that quarter to which alone the appeal can be made.

Gentlemen, passing from all topics of this nature, you are aware that the indictment upon which the prisoner at the bar is brought before you, contains against him a charge of Treason. That Treason, especially when divested of the technical terms in which it is expressed in the indictment, resolves, in the first place, into a charge of compassing and imagining the death of the King; secondly, into a charge of levying war against the King, within his realm; and, in the third place, into a charge of compassing and imagining, conspiring and devising, to levy war for the purpose of compelling his Majesty to change his measures, or for the purpose of compelling either House of Parliament to change their measures, and thus by force to accomplish an alteration of the constitution of the kingdom.

Gentlemen, it has been explained to you frequently in the course of this day's proceedings, that the law of Treason, which is now embodied into the law of Scotland, is originally derived from a certain English statute of considerable antiquity; but ancient as it is, and constructively extended, as has been alleged upon the other side, it is a statute which in its terms is as clear and as precise as any part of the law

of either kingdom, by which crimes are defined and assigned for punishment; and if any construction has been applied to it, I think I could pledge myself to shew, to the satisfaction of any man, that that construction, so far from being a severe construction to the subject, is a construction which has been applied humanely in subservience to the great principles for which it was passed, confining its operation to those cases which, strictly and properly, and in the contemplation of common sense, fall within the great objects of that department of the law.

The terms of the statute I shall beg leave to read to you. It is a statute of Edward the Third, and, in so far as regards the question before you, is in the following terms:—"Whereas divers opinions have been before this time in what case Treason shall be said, and in what not—The King, at the request of the Lords and of the Commons, hath made a declaration in the manner as hereafter followeth; that is to say, when a man doth compass or imagine the death of our Lord the King, or if a man do levy war against our said Lord the King in his realms, or be adherent to the King's enemies in his realm, giving to them aid and comfort in the realm, or elsewhere, and thereof be proveably attainted of open deed by the people of their condition." That is the definition of the two Treasons to which your attention is to be directed in what I am now to submit to you.

From the terms in which this statute is expressed, it would appear to be directed in terms to no other object but the preservation of the person of the King. If the strict terms are taken, it is directed solely to protect the person of the King, and to protect him from such attempts as necessarily tend towards his personal destruction. Now, Gentlemen, you will observe (and I shall state it very briefly to you) how the whole purpose of protecting the integrity of the constitution is accomplished by these precise and simple terms. It is only necessary to advert to the structure of the constitution to be satisfied on that point. The King, as you all know, constitutes in his person one of the three estates of the kingdom; and you are equally aware that it is an incumbent duty of that branch of the constitution, the Exe-

cutive, to whom the whole active and executive power is committed, to protect all the other estates, and all the constitutional establishments of the kingdom, from any violent or treasonable alteration. And therefore it is, you will see, that it is impossible to accomplish the violent subversion of any branch of the constitution, without, in the first place, overcoming the third, or kingly estate, and without doing that which is levying war against the kingly estate, without subjecting it to force and restraint, and entirely abolishing its exercise. From this principle it has been held, that the Treason of levying war against the King, although capable of being stated as a separate and distinct Treason, is nevertheless considered as an overt act, in furtherance of that other and primary Treason, compassing and imagining the death of the King; in respect, that it is impossible to levy war against the King, without necessarily and inevitably bringing, not merely the kingly office, but the kingly person, into hazard and danger.

If it were necessary in the present instance, there could be no difficulty in confining the charge, and in clearly establishing the charge, now brought against the prisoner, under the first of these Treasons, compassing and imagining the death of the King; but I do not mean to depart from the view of the charge which was taken by the public prosecutor in his opening speech, and it will be quite sufficient, therefore, to confine your attention to that Treason which consists in levying war against the King, and it is principally, if not solely, to that view of the case that I am now to direct my observations.

Gentlemen, what is levying war against the King? All the authorities—and referring you to take the law not from me, but from the Court, by whom you are afterwards to be directed, I shall speak very generally upon this point—all the authorities concur in stating, that there are two points in this matter chiefly to be considered. In the first place, whether there has been assembled an armed multitude—a multitude not armed with all the regularity of well appointed war—but a multitude deriving confidence from their numbers, and armed in any way with hostile weapons, such

as are sufficient in their apprehension to commence that system of operations which constitutes the levying war. The next point, in considering this Treason, is, with what design, for the accomplishment of what purpose, is that multitude assembled, and has that multitude so provided itself with arms?

These are the points to which the learned counsel on the other side has chiefly directed himself; although I could not help thinking, that he shewed much greater dexterity in withdrawing your minds from the proper subject before you, than in giving you much assistance on the law; and for the best of all reasons, because if he had done so, it would have exposed the naked, undisguised, and undisguisable nature of that Treason, which, I am confidently to contend before you, has been brought home, beyond the possibility of doubt, to the prisoner now at the bar.

Upon the first of these points, whether there was here assembled a considerable and a violent multitude, who had provided themselves with arms, who had arrayed themselves in a warlike manner, who had actually proceeded to use those arms in the way which has been so clearly proved to you by a course of evidence that need not be repeated—upon one and all of these points, it is impossible for any human understanding, that has bestowed the slightest attention upon the proceedings which have been detailed in your presence, to entertain the remotest hesitation or doubt. It is a point which has been yielded with great discretion upon the other side; and it is a point upon which I should be ashamed to say one word more to you. Therefore, Gentlemen, you are brought to a short, and, as I apprehend it, as clear a point as ever was submitted to the consideration of any jury; the point is one which is common, not to the charge of Treason only, but to all crimes that can by possibility be brought under the consideration of courts and juries. It is brought to this point, what was the design of the parties—with what design did they proceed in the way in which they are proved to have proceeded—was their design an innocent design, a laudable design? Nay, even taking it to be a criminal design, was it one of private import—was it for the vindication of any

private right, peculiar to any one of the individuals who were there engaged—was it for the satisfaction of any private grudge—was it for the inflicting of any private revenge that all these proceedings, these blood-thirsty proceedings, were pursued? That is the question which you must lay to your conscience; and I am persuaded, when you give a conscientious attention to the evidence, it is utterly impossible, as I said before, for you, or for any man, to entertain the most remote vestige of doubt.

Gentlemen, it is not necessary that the public design,—supposing I shall be successful in shewing they had a public design,—it is not necessary that the public design should have been the immediate destruction of the King—it is not necessary that it should have been to accomplish any particular restraint or invasion of the kingly office; but if the design was one to accomplish a change in the constitution, be it of any description whatever—if it were in the merest trifle in the constitution—if it were to accomplish the slightest alteration in the sacred form of the constitution—and by force, for it was by force, and by nothing else, if the design existed at all,—it brings one and all of them within the sphere and the range, and within the awful penalties of the crime which is now laid to their charge.

Gentlemen, if there had been nothing more in the case but that the armed party, so arrayed and marshalled and prepared, with whom the prisoner was joined, had been found in close and hardy conflict with the troops of his Majesty, I do not scruple to say, that it lay upon them to prove that they were not levying war against his Majesty. Notwithstanding all that has been said about the presumptions in favour of innocence, presumptions against which, in their fair and legal import, I should be the last person in the world to argue, I say, nevertheless, that persons may be placed in such a situation as to cast upon them the whole burthen of exculpation; it is not necessary that I should plead this case to that degree, but I do not scruple to lay down that proposition as being founded both in reason and in law. Gentlemen, if a man is seen to run another through the body—to blow out his brains, is any thing more to be required of the public prosecutor than the proof of that fact?

Is he bound to prove that this murder, as it is in its first appearance, this act of homicide, to call it by an abstract term, is not committed in self-defence,—is not committed under the influence of insanity, or by accident? No such thing. The duty of the public prosecutor is completed by proving the fact of homicide; and that fact being proved, turns over upon the prisoner the whole duty of his own exculpation. Just so, Gentlemen, I apply the principle here. And if a party of men, in regular array of war, are found in conflict with the troops of the King, I say it lies upon them to prove that their purpose was not that which, from necessity, proclaimed by the circumstances in which the parties are found, is the inference which every man must draw from the facts so proved.

Gentlemen, there is a passage in the work of a lawyer who is of the highest authority upon this subject, and who certainly cannot be accused of not giving all due attention, and all due regard, to the condition of prisoners, and to the protection of the subject, in matter of crimes, which warrants the principle to which I have adverted. In order to understand properly the passage which I am about to read, I may state to you, that there is such a thing as what is called a constructive levying of war, which is not an overt act of the treason of compassing the King's death; that is, if an assembly of people, arrayed in a warlike manner, proceed to the accomplishment of any general alteration in the constitution, or establishments of the country, even without coming into conflict with the troops of the King, they are held to fall under the situation of levying war against the King, because they are doing that which it is the duty of the kingly office to prevent them from doing. Such is termed a constructive levying of war. Now, when is it that this constructive levying of war comes to rise up to the situation of a direct levying of war? I quote from Hales' Pleas of the Crown, vol. I. p. 123.,—a work of the highest authority. "But such a levying of war may in process of time rise into a direct war against the King; as if the King send his forces to suppress them, and they fight the King's forces; and then it may be an overt act to prove the compassing of the King's death."

In like manner it is laid down in another authority, of no less respect in the law, (I quote now from Foster, 218) "An assembly armed and arrayed in a warlike manner, for any treasonable purpose, is *bellum levatum*, though not *bellum percussum*;" that is, it is war levied, although no blood has been shed, although the campaign has not been begun, although no part of the country has been possessed by rebels, if the preparation for war is so far complete, if they are in possession of arms, and arrayed in a warlike manner. This authority adds, "Attacking the King's forces in opposition to his authority, upon a march, or in quarters, is levying war against the King." And I shall have occasion to advert to this again afterwards, when I come to notice a part of the argument on the other side, in which it seemed to be stated, that, unless it could be established that Treason had preceded the battle or the affray of Bonnymuir, Treason could not be made out on that fact; and it seemed to be maintained, that before that fact took place, there was not the remotest ground for saying Treason had been committed.

But to the immediate purpose which I have in hand, "Attacking the King's forces, in opposition to his authority, upon a march, or in quarters, is levying war against the King." There then follows a qualification, which, in truth, comprehends, in the space of three or four lines, the bulk of the argument upon the other side;—"but if, upon a sudden quarrel, from some affront given or taken, the neighbourhood should rise and drive the forces out of their quarters, that would be a great misdemeanour, and if death should ensue, it may be felony in the assailants, but it will not be Treason, because there was no intention against the King's person and government."

Now, the import of that authority is, that if the King's forces, in opposition to the King's authority, were attacked upon a march or in their quarters, such a proceeding, by presumption of law, would be levying war against the King, and it makes out the proposition to which I have been endeavouring thus briefly, and perhaps imperfectly, to direct your attention, that if there had been no other evidence in

the case but this attack upon the King's forces, it would have authorized me to demand a verdict at your hands upon that branch of the indictment which is laid against the prisoner.

But, Gentlemen, there is a vast deal more evidence, to which it is impossible for any man to shut his eyes; and if once your eyes are open to it, I must protest for one that I cannot discover upon what ground the conclusion can be avoided. I say, the connection of the prisoner with the hand-bills, both the one and the other of those hand-bills, which are so reduced into evidence as to authorize me to read them to you, is brought home in such a way that it is impossible to escape from them; and I shall call your attention shortly to the situation of each of these hand-bills.

But, in the first place, I may say a word or two as to their contents; and whether you take the first paragraph which is contained in them, or whether you take that part of them which peculiarly relates to the Address to the Soldiers, I hold both the one and the other to import an equally treasonable purpose. It says, "Friends and countrymen, roused from that torpid state in which we have been sunk for so many years, we are at length compelled, from the extremity of our sufferings, and the contempt heaped upon our petitions for redress, to assert our rights at the hazard of our lives, and proclaim to the world the real motives which (if not misrepresented by designing men, would have united all ranks) have induced us to take up arms for the redress of our common grievances. The numerous public meetings held throughout the country, has demonstrated to you that the interests of all classes are the same. That the protection of the life and property of the rich man is the interest of the poor man, and in return, it is the interest of the rich to protect the poor from the iron grasp of despotism; for when its victims are exhausted in the lower circles, there is no assurance but that its ravages will be continued in the upper; for, once set in motion, it will continue to move till a succession of victims fall. Our principles are few, and founded on the basis of our constitution, which were purchased with the dearest blood of our ancestors, and which we swear to transmit to posterity unsullied, or perish in the attempt; equality of rights (not of

property) is the object for which we contend, and which we consider as the only security for our liberties and lives; let us shew to the world that we are not that lawless sanguinary rabble which our oppressors would persuade the higher circles we are, but a brave and generous people, determined to be free. Liberty or death is our motto, and we have sworn to return home in triumph, or return no more." That is the first and the last sentence of the commencement of this Address. Now, Gentlemen, can any one of you doubt, that here is a distinct proclamation of a public purpose, a distinct proclamation of an intention of redressing their common grievances, by taking up arms?

What do all authorities concur in stating the law to be as applicable to such attempts? "Insurrections, in order to throw down all inclosures, to alter the established law, or change religion, to enhance the price of all labour, to open all prisons, all risings, in order to effect these innovations of a public and general concern, by an armed force, are, in construction of law, High Treason, within the clause of levying war; for, though they are not levelled at the person of the King, they are against his Royal Majesty; and, besides, they have a direct tendency to dissolve all the bonds of society, and to destroy all property, and all government too, by numbers and by armed force. Insurrections likewise for redressing national grievances, or for the expulsion of foreigners in general, or indeed of any single nation living here under the protection of the King, or for the reformation of real or imaginary evils of a public nature, and in which the insurgents have no special interest, risings to effect these ends by force and numbers, are, by construction of law, within the clause of levying war, for they are levelled at the King's Crown and Royal dignity."

Gentlemen, if they are so by construction of law, it is by a construction of law, as I hinted to you in the beginning, equally favourable to the subject, and necessary for the protection of the State, because, by that construction, the law does, in favour of the subject, exclude and relieve him from the penalties of Treason in those cases in which the war is levied for a private purpose; and, therefore, although the offence might fall under the strict letter, it is in consequence

of that predominant construction that it does not fall within the purpose or intendment of the statute; and, on the other hand, while the law thus provides for the safety of the subject in that respect, it provides for the safety of the State in the other respect, by holding it to be a levying war where force is adopted to effect any change in the constitution, which it is the duty of the executive to prevent.

I take it for granted that there cannot be two constructions or opinions about the import of the address which I have read. It is a treasonable address; it does call upon the subjects to take up arms for a treasonable purpose; and, therefore, the question is, whether that treasonable address is brought home in any degree to the prisoner at the bar, and the associates with whom he was connected. Because I state to you, in point of law, and I state it under the correction of the Court, that if this treasonable Address is brought home to any one of those with whom the prisoner was associated in arms, though he may not be a principal in the matter, he becomes a principal in consequence of being an accessory and engaged in it; and I state that as a principle of law on which no earthly doubt can be entertained.

On the important subject of the prisoner's knowledge of, and connection with the Address, I crave you to go back to the evidence of Mr Hardie, the Justice, and his testimony must be quite fresh in your mind. He was in Duke-street in the morning of the 2d of April; he was attracted to a particular place by a crowd of persons assembled around a watch-box; he went up to see what those parties were reading; he himself read part of the address that was there posted up; he heard part of it read aloud by one of the persons assembled; it was read aloud in such a manner that Mr Hardie, and all that were thereabout, must have heard it, and clearly did hear it; there cannot be a doubt of it. In that party was Hardie, the prisoner. Mr Hardie, the Justice, attempted to pull down that address; he was forcibly prevented from doing so; and he was so forcibly prevented by the prisoner at the bar;—that is proved beyond all doubt; and the question for you is, was or was not the prisoner at the bar cognizant of, and acquainted with the contents of that Address,

which he so protected by force, which he so aided in publishing, by protecting it in the place where it was posted up for publication. It was in the course of being publicly read when Mr Hardie came up, and another witness, M'Pherson, who was looking out of his window directly opposite, saw the parties reading it, so that there cannot be a doubt in any body's mind, that that Address was read and known in all its contents by the prisoner at the bar.

It must not be overlooked, that Mr Hardie, the Justice, when he proceeded to pull it down, told the prisoner that it was a treasonable and seditious Address, and that it was his duty to pull it down. The answer made to that by the prisoner was, that he would lose the last drop of his blood before he permitted it to be pulled down. Mr Hardie read part of it himself. At a short distance from where the Address was posted, there was another of a similar appearance fixed upon one of the public wells, containing a similar address at the top, a similar appearance throughout,—containing in the heart of it a passage identically the same with that which was read from the watch-box; and the case for your consideration is, whether there is room for any reasonable doubt, —any such doubt as ought to be permitted to interfere with the clear course of law,—whether there can exist in your minds, acting conscientiously, the slightest doubt,—that the contents of the Address posted up on the well were the same as the contents of that on the watch-box, of which the prisoner was cognizant? That is a question for your consideration. I have stated the view I have taken upon it,—a view upon which I entertain no doubt; but I leave it entirely for your own determination.

You are now to consider what was the justification made to this part of the case, viz. that it was no more a guilty act in the prisoner than it would have been in any other individual, who, hurried there by a vulgar and overruling curiosity, was reading this like any other bloody story, any other tragedy, any other fearful tale posted on the walls, and that his interference was merely to prevent this natural curiosity from being disappointed, by reading the whole right out. If there had been no more than this in the case, there might have been something to be said, perhaps, though I

do not admit that it could have availed much, because, if there had been no more in this case, I should submit this was an act of publication of the Address, inciting the subjects to rebellion, and that it would have been an overt act under the first count of this indictment.

But the prisoner is still more fatally and actively connected with this Address, because he was found in arms afterwards; he is found the same day, or the next morning, in arms.

Gentlemen, I call on you to join these circumstances together, and I say, if you find a man thus protecting the publication of this address, declaring that he would, at the hazard of his life, prevent it from being pulled down and destroyed,—when you find the same individual joined in arms with those who are in possession of the Address,—and when you immediately afterwards find the same individual in the active accomplishment of the purposes proclaimed and enforced in that Address, I say all this is more than sufficient to bring him within the condition of being guilty of a clear overt act of Treason; inasmuch as that Address does give evidence of the design and character of the whole proceeding, in which, in furtherance of it, he is afterwards engaged.

Now, there is another hand-bill which you will find to be in identical terms with the one of which I have been now speaking; and how was that address or hand-bill obtained? It appears that when Cook, the hussar, then a private, now a serjeant, was on his way from Stirling to Kilsyth, he fell in with six armed men upon the road—in that number was Hardie—in that number also was Baird—and it appeared that Hardie was dressing them by the left; he had formed them into line across the road, and he was dressing them in a military manner by the left. Gentlemen, is it possible to doubt that Hardie, the prisoner, is thus intimately connected and associated with, and participating in, what these men were about? Can you doubt he was a principal or accessory, or both? Now, I say, if that hand-bill or Address had been found in the pocket of any one of those individuals, and if that other distinct act had not been done in the presence of Hardie by some one handing it over in his presence, if it had been found in their pockets when they

were apprehended, it would be clear and competent evidence against Hardie, and against all those individuals, and you would be bound to look at it as furnishing evidence of the design and character of that warlike meeting in which they were engaged. But it does not end there; it is not hid in the pockets of one of these persons; it is not found afterwards, and taken from his person after apprehension; because, in the presence of Hardie, it is delivered from a large parcel under his eye-sight, by one of the men so under his charge, and therefore under his cognizance and presumed direction it is given to the soldier whose evidence on that subject is now before you.

Gentlemen, I cannot suppose that you can have any doubt so far as I have now gone. It is impossible for ingenuity to avoid the conclusion from all these circumstances. A doubt, however, has been attempted to be thrown upon the identity of the paper so delivered, and the paper which was exhibited in Court, and which has been permitted to be read in evi dence before you; and you will be pleased to remark the course, and history, and fate of that paper. It was kept carefully in the possession of Cook, and delivered to his officer, Lieutenant Hodgson; it was immediately afterwards returned to Cook; it was carried carefully by Cook, and thereafter given to Lieutenant Hodgson. Cook read it, and stated its substance; Lieutenant Hodgson read it, and was equally clear of its substance and contents. It was delivered by Lieutenant Hodgson to Colonel Taylor. And thus it was, no doubt, out of Lieutenant Hodgson's possession for the brief space of one night, and you are called on to believe that Colonel Taylor might have delivered to this person a different paper from that which he had received the night before. Gentlemen, that is a most irrational and absurd conclusion, and I cannot suppose any intelligent Juryman would give a moment's credit to the doubt there attempted to be suggested. But Lieutenant Hodgson tells you he read it before and since, and he tells you that he is perfectly satisfied, from the contents of it, that it is the very same paper; he says, not merely from its contents, but his expressions are exceedingly remarkable; he says he received a

hand-bill from Cook, that it was out of his hands with Colonel Taylor for one night; but the contents are the same, the signature is the same at the bottom of it, the commencement of the address is the same, and the whole appearance is the same. Now, if we had been identifying any thing else—any material substance whatever, and not a piece of paper containing a printed address—there could not have been the least doubt. In this case you have, in addition to the precise similarity or identity of appearance, the evidence of similarity or identity of contents. I leave this part of the case, therefore, in the conviction, not only that you are satisfied that this address is sufficiently identified, but that, if you are satisfied of that, you must still more clearly be satisfied of this also, that it is brought home clearly to the cognizance and knowledge of the prisoner and his party, to enable you to take it as connected with the proceedings in which he was engaged; and if you do take it as connected with the proceedings in which he was engaged, it is impossible to hesitate as to the nature and character of the crime of which he is guilty.

But this does not conclude the evidence of the general object and purpose of the prisoner and his associates, because I must remind you of the conversation which took place with that very distinct witness, Mr Cook, the serjeant. He asked them what they wanted; (he saw them armed.) What was their answer? They said they were in search of their rights, as every honest man should be. How were they in search of their rights? or what were the rights of which they were in search? Were they in search of their rights as honest men generally go in search of their rights? Had they not arms in their hands? Is that the way in which honest men and loyal subjects go in search of their rights? But what were the rights they were in search of? Was it a private right they were in search of? Was it a private wrong they were seeking to redress, or a private object they were endeavouring to obtain? I cannot allow myself to suppose you could be deceived upon this point; and, therefore, the evidence of Cook, respecting this declaration, which they made to him on the road, in the course of conversation, too, wherein they appear to have thought they had met a man

having fellow-feelings towards them, and in which they betrayed what they were about, establishes that they had taken up arms for the redress of those grievances which, in the Address, they state the whole country had been oppressed with. If you are satisfied on this point, you cannot entertain a doubt as to the verdict which it is your duty to return.

Then you have the evidence of the other witnesses to add to the case.

And, last of all, you have the evidence of his own declarations. Gentlemen, I do not mean to read that declaration over again to you; but I state to you, notwithstanding what was urged against its reception, that it is not only a kind of evidence which the law of England, now made our law, allows, but which the daily law of Scotland, acted upon and enforced by you a hundred times in the course of your lives, allows. It is a kind of evidence which the law of Scotland, as well as the law of England, properly, naturally, and justly, places the utmost reliance upon, against prisoners who are brought here to answer for their crimes. I do not mean to read now that part of the evidence which is contained in the first part of the declaration- it is left unequivocal—it states generally that their object was to accomplish an alteration of the constitution, a restitution of their rights, which they explained to be universal suffrage, annual parliaments, and election by ballot; and if that is not an alteration of the constitution, or rather a total abolition of the constitution, I am at a loss to know what can be so characterized.

After all this evidence, clear and unequivocal as it must be admitted to be, who can doubt as to the treasonable nature of the purpose by which the prisoner and his associates were actuated? This being established, nothing remains about which any dispute can exist. It has been earnestly maintained, that the conflict with the King's troops did not constitute Treason, and cannot be stated as an overt act of Treason; and that if there was Treason at all, it must have been completed at some earlier stage of their proceedings. My answer to this view of the case is short, simple, and conclusive. I contend that the Treason was completed be-

fore the conflict with the King's troops, of which I need not repeat to you the details. The crime had arrived at its full measure of legal and moral consummation by the assembling in arms. But I contend further, that their conflict with the Hussars and Yeomanry was nothing more than a natural and necessary continuation of the active proceedings formerly begun; and that the accomplishment of their treasonable design, and their personal safety, were equally involved in the success of that contest.

Gentlemen, I have detained you longer than I intended, and longer perhaps than it was fit in the circumstances of so clear a case. I should have thought I might have much sooner taken leave of the case by stating to you generally, that if, in the consideration of the whole evidence, you are satisfied in your consciences, that the persons who thus are admitted and proved to have been in the act of levying war, had no public purpose in view, had it not in view to accomplish a general redress of their grievances, or some alterations in the constituted establishments of the country, you would give them the benefit of an acquittal. On the other hand, if you are impressed with those conclusions which the evidence so unequivocally warrants, and which I have endeavoured to enforce upon you, you have no other alternative but to find a verdict of guilty. If you can bring your minds to be satisfied that here was some private purpose of private revenge, some riot for a private and exclusive object, if you can view the case in that way, which I should deeply regret for the sake of the law and the constitution, then you ought and must give your verdict in favour of the prisoner. I leave the case with you. The public prosecutor must be satisfied that his duty is completely done by throwing a criminal on a Jury of the country; and having thus done his duty, he leaves the question, without fear or further concern, in your hands, and to your determination.

Summing up.

Lord President.—Gentlemen of the Jury, It is now my duty to sum up the evidence in this case, and to make to you such observations, in point of law and fact, as,

in my humble opinion, may be of use in guiding you to a just verdict upon this case; and, Gentlemen, I need not remind you that it is your duty now to act under the sacred oath that you have taken, of a true deliverance to make between our Sovereign Lord the King and the prisoner at the bar, and a true verdict to give according to the evidence.

Gentlemen, I shall at this hour of the night, and that you may have your faculties as unimpaired as possible for your part of the duty, endeavour to be as short as I can in the exposition of the law and the summing up of the facts.

Gentlemen, the Counsel on both sides admitted to you, and common sense will tell you, that from whatever source you take the law, you are not to take it, and cannot safely take it, from the Counsel upon either side. They have a duty to perform, which is, for each of them to make the best of the case that they can; and above all, it is the duty of the Counsel for the prisoner to get him acquitted, if it be in the power of eloquence to do so. This, at least, I may say, in distinction between what you have heard from the opposite Counsel, that the law upon the one side at least was supported by some authorities, which were read to you, while the law that was given you upon the part of the prisoner was the prisoner's law alone; for as to its coming from Mr Jeffrey, except that it was clothed with more eloquence than the prisoner could have given it—as an exposition of the law, it is no better than if the prisoner had stated it himself. Neither, Gentlemen, in taking the law from me, are you at liberty to consider what the law of Treason ought to be in this country, or what it ought to be generally and speculatively in any country. The crime of Treason in every country can be nothing but an arbitrary and statutory crime; for every government has a right to prescribe the nature of the allegiance due by its subjects to its sovereign, in whatever hands the sovereignty is placed; and every nation has a right, by its legislative authority, to declare what the measure of allegiance shall be, and what breach of that allegiance shall be Treason against that state. It stands to reason that it must be so—it cannot be otherwise. It is not with regard to Treason as with regard to murder

or robbery. It is not written in the law of God or in our hearts; we can take it only from the statutes.

Now, Gentlemen, the law of Treason with which we have to do, I think it is admitted, is to be found in the Statute-book of England; and it is asked, what have we gained by it in this part of the island? We have gained immeasurably by it; for, by the law of Scotland, down to the Union, (whether the humanity of modern times would have permitted it to continue to modern times, I cannot say,) but by the law of Scotland torture might have been used; but, after that Revolution which placed this family on the throne, our claim of right declared torture to be unlawful, without evidence, *in ordinary crimes;* but in this crime, if it had been tried the day after the Revolution, the Public Prosecutor would have been entitled to apply torture to extort confession from the prisoner. I say, therefore, by the adoption of the English law of Treason, and the form of trial, though less on the form of trial, upon the whole, this country has gained an immeasurable advantage.

Gentlemen, the foundation and basis of the law of Treason, and it has been the substance to the present moment, is to be found in the statute of Edward the Third, which declares it to be Treason, "if a man doth compass and imagine the death of our Lord the King; and, secondly, that "it is Treason if a man do levy war against our Sovereign "Lord the King within his realm." That is the law of Treason; and we can take it, and read it, and receive it, from no other quarter.

Gentlemen, the statute of Edward the Third has been explained, I can hardly say extended; but it has been explained and rendered more perspicuous by a statute passed in the 36th of our late most gracious Sovereign, which was at first temporary, but which has been made perpetual by another statute passed in the 57th year of the late king, by which it is declared not only to be Treason to imagine and compass the death of the King, but it is Treason "to compass or imagine, invent, intend, or devise death or destruction, or any bodily harm, to our Sovereign Lord the "King; and, further, it is declared to be Treason to com-

"pass or imagine, invent, devise, or intend to levy war "against the King, in order to compel him to change his "measures or councils, or to overawe or constrain either or "both Houses of Parliament." That is the law of Treason, and it is neither a severe nor an unjust law. As to compassing and imagining the death of the King, it would be severe indeed, if the compassing and imagining was to be punished as Treason, when confined to the breast and to the naked intention of the party; but that is not the law, for the law adds, as to compassing and imagining the death of the King, "if the person accused shall thereof be provably attainted of "open deed by people of his condition;" that is to say, according to modern interpretation, if his intention against the life of the King be manifested by some act or circumstance clearly indicating the traitorous purpose of his heart. Now, Gentlemen, this criminal intention is just what is at the bottom of all criminal jurisprudence; it is only carried one degree, and but a slight degree, further in the case of the King than it is in any ordinary crime. When a man kills another, he is not convicted or punished merely because he has killed him, but because it will be presumed, if he does not prove the contrary, that he has killed him with a murderous intention; that, no doubt, will be presumed from the mere fact of killing, but the prisoner is entitled to prove otherwise; and if he do prove otherwise, thoughhe has killed a person he is not guilty of murder. The only distinction between other crimes and Treason is this, that in the last the criminal intention is punished before it has arrived at its final and actual completion, and this the law has enacted, and wisely enacted, for the public safety, well knowing that the life of the King is in reality the safety and security of the peace of the country; for I need not state to you the inevitable consequences, and the horrors and disturbances which in all probability, nay, certainly, would follow any successful attempt against the life of the King.

But, Gentlemen, it does not appear to me to be exceedingly necessary that we should trouble ourselves much with that branch of the law of Treason, because the Prosecutor told you, and his evidence went to that, that he relied on the other species of Treason contained in one of the counts,

that of levying war against the King, or that of compassing and imagining, intending, devising, and inventing, the levying war against the King, with an intent to compel him to change his measures and councils, or to overawe or restrain one or both Houses of Parliament. That is the species of Treason we are now to consider, which you will find laid down, in the second count of the indictment, levying war, and the fourth count, compassing, imagining, inventing, devising, and intending to levy war against our Sovereign Lord the King within his realms, in order, by force and constraint, to compel him to change his measures and councils. The second and fourth counts of the indictment, the one levying war, and the other compassing to levy war, therefore, Gentlemen, are the species of Treason to which you will confine your attention; and I state to you, that it is the law, that, in order to constitute a levying of war against the King, it is neither the number engaged, nor the force employed, nor the species of weapon with which they may be armed, that will constitute the overt act of Treason. To prove such levying of war, it is the purpose and intention, the object which they have in view, which congregates and assembles them together, which gives them the impulse in their arming and in their rising—it is that which constitutes Treason, and distinguishes the crime from that of riot, or any other rising for any private purpose that can be imagined; and the law is positive, and it has been so laid down by all our writers, and found by judges and juries again and again, that if a rising and insurrection be for a public purpose, to resist the King's authority, to compel him to do, or to refrain from doing, what it is part of his prerogative to do or not to do as he thinks proper; if it be to compel him to change his measures and councils, it amounts to Treason. If the purpose be of a general nature, not connected with the private grievances of individuals, it is Treason; for example, if the people of any particular town were to rise to compel the magistrates to liberate a person in a particular gaol for any private affection or association with him, that would not be Treason, though a high crime, and it might be resisted by force. That would not be Treason, because it was not a public general purpose—it was a purpose connected only

with the private views which the inhabitants of that particular town had. Accordingly, in the case of the Porteous mob, after due deliberation, it was held not to be Treason, and the indictments were only laid as for a riot. In the same way, if the people of a particular town, or of a particular parish, having a right, or thinking they have a right, of pasturage over a particular common, saw certain proprietors in the neighbourhood making inclosures on the common, and were to rise in a tumultuous body, with arms in their hands, and by force and fear pull down those inclosures, or compel the persons who had made them to take them down, that would not be Treason, that would be nothing but riot, because it is a mere private and local purpose which they had in view. But, on the other hand, it is just as undoubted, and has been so found and laid down by all authorities, that if the people were to rise in different parts of the country, to pull down or to throw open all prisons, and to liberate all prisoners; if the people were to take it into their heads that no commons should be inclosed, even by the authority of Parliament, and that they would pull them all down, that would be a resistance of the King's authority as joined with that of the legislature; that would be a public purpose; and a rising to effectuate that purpose, I state positively, on the authority of the law-books, is a positive and an overt act of Treason; therefore, I repeat it again, it is the object which the persons rising in arms have in view, it is their purpose which constitutes Treason or not Treason, according as it is a general purpose common to the community at large, or a local purpose in a few individuals. That, Gentlemen, is undoubtedly the law of the land. I have stated to you the authority from which alone you can take it; it is not what the Counsel on either side may state—it is not what the prisoner may wish—it is not what his Counsel may eloquently set forth—it is what the law has declared, and which it alone can declare; for nothing but the law of this land, and every other land, can declare what shall be Treason against the Sovereign of that land.

Gentlemen, this being the law of the land, let us now apply ourselves to the evidence before us, and consider whether there be, as against this prisoner, any evidence of his

rising in arms and levying war against the King, for any such public and general purpose. Gentlemen, the evidence commences with that of John Rennie, who was called, in point of form, to prove that this attack upon the King's forces was made in the county of Stirling; because, unless an overt act of Treason is proved within the county in which the indictment is found, the prosecutor is not at liberty to bring evidence of any Treason in another county; but if once an overt act is proved in the county, then the prosecutor is at liberty to bring evidence of Treason committed in other counties also. If it were not so, it seems to me that cases of the most atrocious Treason could not be proved; for example, where an army was marching from county to county and defeating the King's forces, it is plain the full extent of that Treason could be proved nowhere; because, if in the county of Stirling a Treasonable rising occurred, and this Treason afterwards spread from one end of the country to the other, and could only be proved in Stirling, the full extent of the conspiracy never could be known.

That witness was brought for that purpose, but I shall not begin with him, but take up his evidence in the natural order of events—and the natural order of events is the evidence of Mr Hardie, a Justice of the Peace. Mr Hardie, the Justice, swears to you, that he lived in Duke Street, Glasgow,—that he had been three years an acting Magistrate,—that he was in Duke Street about half-past eight o'clock on Sunday morning, the second of April, when his attention was attracted by a crowd of people on the south side of the street; he saw the prisoner in the crowd, the crowd standing before; he saw them, and went up, and the prisoner was in the crowd; they were all looking at a placard posted upon a watch-box; one man was reading it aloud, so that all the crowd could hear; and the witness having looked over it, and followed him, he saw that he read it faithfully. He says that it was read so that the prisoner could also hear it. The witness pressed through the crowd to take it down, but he was prevented by the prisoner and others. The prisoner seized him and hustled him off the pavement, having seized him by the collar. That he then told him he was a Magistrate; that the proclamation or ad-

dress was treasonable and most improper, and ought not to be posted up. The prisoner (when he said he was a Magistrate) said, "Where is your authority?" The witness had not his authority, but he told the prisoner that there must be plenty of people in the crowd who knew he was a Magistrate, though, at the same time, he says he did not know any of them. The prisoner said, before he would permit the witness to take down that paper, he would part with the last drop of his blood. This was after the second attempt to take down the paper, in which he was not successful; he had not personal strength enough. The prisoner seized him again by clasping both the witness's arms within his, and he hustled him off the pavement. He made no further effort. He says he would certainly have taken down that paper, but for the prevention or interruption which he received from the prisoner and the other persons concerned with him: That he left the spot, finding it impracticable to do so. He has seen the prisoner at Stirling twice since his confinement. He had never seen him before that day. He has not the least doubt of the prisoner being the person of whom he has spoken. Witness did not read the whole of that address; a certain portion of it was read aloud by the person who was reading at the time he approached the crowd. The witness followed him through a part of it. In two or three minutes after he left the crowd, he saw another address that was posted up against a pump well, about four or five feet high, which he took down, and read it afterwards, and which he has had in his possession ever since. On having read it, and compared those parts of it which he remembered having read before, he swears that both the copies—both the one the prisoner prevented his taking down, and the other, did contain the particular passage addressed to the soldiers, which I will presently call your attention to. Both copies contained the passage read by the person in the presence and hearing of the prisoner. He produces his copy and reads that paragraph. The person reading that paragraph was stopped by the witness's exertion to get towards the place to take it down. The address which he produces is the same which he got from the well. Some person appeared to have attempted to take it down before, as a fragment was torn off the corner. The

title is the same, and the paragraph read is the same, as that which was against the watch-box, and which was read amongst those persons. Then he talks of the great difference there was in the appearance of Glasgow, and the appearance of the people before and after this placard.

Now, Gentlemen, look at the indictment, in which you will find that hand-bill engrossed verbatim; look at it, and read it attentively, and if ever there was Treason launched from the pen or press of this country, that paper is a Treasonable composition.

Now, Gentlemen, you will observe that the prisoner and others were looking at this Address, and hearing it read. Before Mr Hardie came up the crowd were standing there; they did not gather together simultaneously along with him; but it was their standing and looking at the paper, and hearing it read, that attracted his attention, and led him to advance towards them.

Now, Gentlemen, what are the six or eight words immediately preceding that paragraph, which Mr Hardie swears he himself heard read in the presence of the prisoner? The immediate preceding words are, "Liberty or death is our motto, and we have sworn to return in triumph, or to return no more." Now, Gentlemen, is it possible for you to suppose, I do not talk of presumption, but I wish I could in my own mind see a shadow of ground for your presuming, that those six or eight words immediately preceding that paragraph regarding the soldiers, which Mr Hardie heard read, had not been read before to the prisoner, or by himself? if you can in charity, or in mercy, believe that, I have no objection—with God and your conscience be it. I shall only say one word upon that appeal to your mercy which was made with such eloquence, that if, beyond a certain extent, you listen to the plea of mercy in the face of evidence and your oath, you are guilty of neither more nor less than wilful and corrupt perjury; to a certain extent, indeed, you may give way to mercy, you are authorized to give way to mercy, and the law requires it of you, and mercy requires that you should listen to her dictates. If the evidence be doubtful, then to be sure you will lean to the side of mercy; but as to leaning to mercy in the face

of evidence, if Juries are to adopt that principle of acting, and to listen to appeals to their passions such as you heard this night, and to words instead of facts, there will indeed be a revolution in our government, for no people under the sun could submit to have justice administered by such a tribunal. It would go further than any thing else to overthrow our happy constitution, if Juries were turned into implements to gratify their own passions, or the appeals to their passions made by others. You are bound to give a verdict according to the evidence, leaning to mercy only where the evidence is doubtful. And, Gentlemen, if you do and can feel a doubt as to the prisoner at the bar being fully aware of the whole contents of this Address, then to be sure you will find so; because, being in doubt, you will lean to the side of mercy. But, with regard at least to a part of the Address, it is impossible to doubt. It is proved to have been read to the prisoner by the person who was reading; it is not left to conjecture whether he was privy to that part of it—part of it was read to him, and not the least criminal part of it—that part addressed to the soldiers, which you will read when you will retire, calling on them to rise in mutiny to their employers, and to join the prisoner and his associates in the vindication and assertion of their rights. Therefore, Gentlemen, here is an Address posted up, calling upon the people to rise for a public purpose, stating that liberty or death was their motto, and that they were never to return home except they returned in triumph; calling upon the people to rise, as it is said, for the assertion of their rights. That day, and the next day, and the day after, it is sworn to you by a witness whom I shall presently come to, that he saw the prisoner at the bar walking idly in the streets of Glasgow, mixed with other bands of idle men, exactly obeying the terms of that proclamation—never to work again till they had accomplished their purpose. In the first place, I must state to you what this prisoner did to Mr Hardie. He positively prevented him taking down this address, and Mr Hardie positively swears that the prisoner was the most prominent of the party in preventing his taking it down. Now, I state to you in law, without the possibility that you can doubt it, because common sense tells us the

same thing, that with regard to every person who may have had an opportunity of reading that proclamation which the prisoner prevented Mr Hardie from taking down, after he so prevented him, it was a new publication, it is just the same as if he had posted up another; for where is the difference between a man who posts up one copy, and another man who prevents it being taken down, so that all in future may read it; the guilt is the same, and, therefore, that was a republication of it to the whole inhabitants of the city of Glasgow.

Then, Gentlemen, comes Mr Stirling, the surgeon. He recognizes the prisoner; saw him in Duke Street. Mr Hardie was then in the act of taking down one of those papers that was posted on the watch-box. Mr Hardie first of all attempted to snatch it down with his hand, and did not succeed; he afterwards tried to take it down with the point of his umbrella, but was prevented by the prisoner, who caught hold of him by the waist and pushed him off the pavement. There were twenty or thirty people round the prisoner, who did not assist him, but some of them appeared friendly to him. One spoke in his behalf, and said, he supposed there was no ill contained in the paper. The prisoner wanted to know for what reason Mr Hardie wanted to take it down, and what authority he had for doing so; to which Mr Hardie replied, that he was a magistrate, and that it was a treasonable paper.

Now, Gentlemen, let me call your attention for one moment to a fact materially rested on by the prisoner, the doubt that the prisoner might have entertained as to the authority of Mr Hardie to take down this Address, whether he was a magistrate of Glasgow or a justice of the peace. If he had neither been justice, magistrate, or constable, but the humblest individual in Glasgow, he was justified and bound to tear down that paper, and all persons were guilty of an illegal act who resisted an individual in taking down that paper; and, therefore, it is of no consequence whether the prisoner knew he was a magistrate of the city or of the county, for, if he was the lowest individual, he was equally bound to tear down that paper as any magistrate could possibly be.

Then he goes on to say the prisoner asked his authority; and he answered, that he was a magistrate, and the paper contained seditious matter. He saw the prisoner after that frequently—on the Monday, on the Sunday afternoon, and on the Wednesday morning, in different streets in Glasgow, with a number of people with him, quite idle. Then he tells you that there was one Anderson, an exciseman, at the place where the paper was posted, along with the witness; that the prisoner told him, Anderson, that he knew his principles as well as the witness Stirling's; that it was they that had brought Mr Hardie there to pull down the proclamation, and he would mark them well. Now, Gentlemen, is it possible, with the utmost stretch of candour and mercy, to suppose that the prisoner at the bar would have used this language in behalf of, and in defence of a paper of the contents of which he was wholly and completely ignorant?

Gentlemen, to this fact you have the evidence of Hugh M'Pherson, if you required any corroboration; but there is no contradiction, and M'Pherson swears to the same fact—that he was in Glasgow upon the 1st and 2d of April last; that he was out in the morning of Sunday the 2d of April; he knew Mr Hardie, whom he saw that morning in Duke Street, when looking out of his window; there were other people upon the street at the time, who were reading a paper that was posted upon a sentry-box; there were twenty or thirty of them; one man was reading aloud; that he shortly afterwards went out, and saw the prisoner Hardie. Mr Hardie, the magistrate, attempted to take down the paper, and the prisoner took Mr Hardie by the breast, and would not allow him to take it down; therefore, you have here the prisoner implicated with this treasonable paper in a manner that it is impossible to doubt he had made it his own. He says, "I will shed the last drop of my blood before you shall take it down." He resisted its being taken down; he told people, I know your principles, gentlemen; you brought Mr Hardie here to take down this address, and I will mark you well for it; therefore, Gentlemen, alas! I am afraid this prisoner, at his very first appearance on the stage, is implicated too deeply in

the knowledge of this treasonable paper; for that it was treasonable his Counsel could not deny, no man can deny it. Then, Gentlemen, what is it? A proclamation calling on the people to rise in arms to assert their rights, and never to return but in triumph? to rise in arms; and, within two short days after that address, what is it you see the prisoner doing? rising and marching in arms, as the proclamation had called upon him to do. If, after this, you shall think that his so rising in arms (for in arms he was,—it is not disputed) had no connexion in his mind with the treasonable Address which so called upon the people to rise, you will find a verdict for the defendant; but if, on the other hand, it be too plain, as I am afraid it is, that no charity of construction can or ought to lead you, or any other reasonable man, to believe that the prisoner's so rising in arms was not connected with that purpose and intention, then you will draw the necessary conclusion, that his so rising in arms was in furtherance of the treasonable purpose of that publication, and was an overt act of Treason, an actual levying of war.

Then, Gentlemen, I come to the evidence of Archibald Buchanan, a publican at Castlecary Bridge; a party came to his house on the Wednesday morning. At half past six they came across the bridge; they came and tapped gently at the door; he told them to come in; there were from twenty-four to thirty of them; they had all some weapon or other; some had long sticks, with irons at the end of them —in plain English, pikes; some had muskets; they asked if he had some porter and bread, and they got a dozen of porter, and a dozen of two-penny loaves; they were at his house about half an hour. One little man asked what was to pay; this was Baird, whom he identified. He, Baird, gave him seven shillings and sixpence; he did not hear him say any thing about a note;—had the money in his pocket, as far as he observed; asked for a receipt, which receipt the witness was preparing to write out in the usual terms; but he was told that was not the form which they required, and Baird dictated the form of the receipt to him, which is this:—"A party," or, "the party called here for victuals, for porter and bread, and paid for it 7s. 6d." That is the

terms of the receipt, "the party called." Now, Gentlemen, if Mr Baird had paid this money out of his own pocket, and meant to treat his fellows with it, what was the use or purpose of a receipt in any terms? A receipt is seldom asked or given for a tavern-bill, paid at the moment, before they leave the house; but if a receipt was asked upon such an extraordinary occasion, it would be asked in the name of the person who paid the money for the use of himself or others; but this is asked in the name of a party, or the party, evidently with a view that they might have a document to shew to some person or other from whom they were to reclaim the money they had so expended. Then the party went away together; they did not cross the bridge again, in other words, they proceeded on their way eastward.

Then you have Alexander Robertson, of Drumhead, in the parish of Falkirk, who remembers, on the morning of the fifth of April last, when he opened his window-shutters, about eight o'clock, he saw a parcel of people walking in military array along the canal eastward, about four hundred yards off; they had long sticks or pikes sloped over their shoulders, they were marching two deep, they were keeping step—he thinks there were about four-and-thirty—they went out of sight in about an hour or less; he saw them marching along the drove-road going up to Bonnymuir; they went up towards the top of the hill; he then saw that a few had guns; the position they had taken in going up the hill one above another enabled him to see that some of them had guns; the rest had pikes. The last time he saw them, they were going in a more careless and straggling manner than they had done before; they went up to the top of the hill, and halted there for about half an hour, during which time he was keeping his eye upon them. As he was going home to take his breakfast, he saw a troop of cavalry coming at full speed, and stood still to see which way they went; he was then between a quarter and half a mile from the place where those men were assembled upon the muir. These people remained in the same position, sitting and standing on the muir, till the cavalry came

through the aqueduct, and went up the drove-road, the same way that the people had gone, until they got to the edge of the muir; the people were upon a height, from whence they must have seen the cavalry; they waved their hats over their heads; the party that were standing on the muir ran down the hill as the cavalry came up, and posted themselves at the back of a dike; they lined the dike, that is, drew themselves up behind the dyke—which he says was about four feet nine inches high; that they stood so as not to be seen; that the cavalry came up, and they commenced firing upon them in an irregular manner (that is, those who had taken up their position behind the dyke,) when the cavalry were at about eighty or a hundred yards distance from it. The witness was about six hundred yards distant; he saw the guns over the dike when they were levelled and fired at the cavalry; there was first one shot fired, and then two; there were more than two shot fired in an irregular manner. The cavalry continued to approach the dike; they went through a small slap in the dike, he thinks, before they fired; but he is certain that no shot of any kind was fired by the soldiers until after the firing from the dike; after they went through the slap they fired, and he could not see for about a minute, in consequence of the smoke; in a short time, they were all dispersed or taken prisoners; there was a wounded man that was taken and carried to his house by desire of the Lieutenant, from whence he made his escape.

Upon his cross-examination, he again swears, that he is sure the cavalry did not fire till a number of shots were fired at them.

Gentlemen, here you have a treasonable proclamation, calling upon the people to rise—you have a party so risen, and marching in military array, with arms of different descriptions, of which party the prisoner was one; you have them, upon seeing a party of his Majesty's troops advancing, rushing down the hill to take up a most favourable position, a position which, notwithstanding all the discipline and courage of those troops, if they had not been enabled by that gap in the dike to get through, it is impossible to

may might not have enabled that party to have utterly defeated, if not totally annihilated, that body of troops; for, it must strike you that the only wonder is, that in the mercy of Providence more mischief was not done. Now, Gentlemen, for what purpose is all this, is the question that you are called upon to decide. Was it for the purpose of escape? was running down into the jaws of the soldiers the way to escape, when they had a dike between them, and the advantage of many hundred yards at the top of a hill, with a wood at hand? (for it was proved that it was only when the cavalry turned round the angle of the wood that the firing commenced;) Was this for the mere purpose of escape? or did they resist some supposed warrant to apprehend them, engaged in some minor purpose, not connected with the Treason that had brought them out? I wish from my heart that you could draw that conclusion, or that I could direct you to do it. I cannot draw it in my mind; you may.

You next have the evidence of James Russel, of Longcroft; he lives within a gun-shot of the public road. On the 5th of April, between seven and nine in the morning, a party of men came to his house; he understood them to be seeking for arms; he had two guns in the house, and he hid one of them; and before he returned from hiding one of them, a man belonging to the party had taken the other gun away. He saw a gun afterwards in Stirling Castle, which was taken from some of the prisoners, and he identified it. James Murray, armourer, and John Benson, the storekeeper, swear they have had the arms in their care, and kept the key, and no other person had it from the time they were deposited there till they were brought here; and James Russel was called back, and identified his gun.

Now, Gentlemen, what is all this for? what did they seize arms for? What was the object in seizing them? was it for any lawful purpose? was it for any purpose, short of the purpose which that Address had in view? If it was, say so; but that they did seize arms to accomplish the purpose in view, whatever it was, there can be no manner of doubt; and, accordingly, you will find it admitted by the

prisoner, that their purpose was to seize arms wherever they could find them.

Then, Gentlemen, you have the evidence of William Grindlay, who lives at Bonny Mills—He says, on the 5th of April he saw a party near his house, about twenty in number, they were going along in marching order, most of them were carrying pikes, he observed one with a gun; they were going along the canal-bank towards Falkirk and Camelon, but he lost sight of them; he afterwards saw the smoke of guns on the height of Bonnymuir, and saw some cavalry pursuing a parcel of people; after the party had passed his house, he missed a pitchfork, which, he knows, either the night before, or some short time before, he saw leaning against the side of his house; that he saw it afterwards with the horsemen, when they came back with the men, who he believes were some of the same he had seen in the morning; he identified his pitchfork, which was in the box; and you will recollect that he was called on by a cross question, not a very fortunate one, how he could identify one pitchfork from another, and he pointed out a mark by which he knew it; and you know in the country, people know what belong to themselves, though they cannot make the description intelligible to another, but it so happened this had a mark which made him positive it was his.

Then, Gentlemen, you have the evidence of Nichol Hugh Baird, a private in the Falkirk Yeomanry Cavalry, he went on duty on Monday the 3d of April; he got leave of absence to go home on the Tuesday evening; as he was returning to join his Troop on the Wednesday morning about half past seven o'clock, he came up with about a dozen men on the road, apparently armed, who obstructed his passage; he asked them to let him pass; one man came out and obstructed him, saying, I will be damned if you shall; that they demanded his arms; that upon that he presented his pistol at them, and made his way back again and returned to Kilsyth, and gave information; that this was about four miles and a half eastward of Kilsyth; that Lieutenant Hodgson, of the 10th Hussars, immediately came off with a party of Hussars and Yeomanry; that he was ordered to join them; they consisted of two or three and twenty, partly

Yeomanry and partly Hussars; the Hussars were mounted, some on the Yeomanry horses and some on their own; that the party moved off eastward to Bonnymuir; they advanced up the muir; there were people on the top of the hill, whom they advanced towards; that these people advanced towards the party, and took up a position behind a wall; they cheered; he says there were about five and thirty or forty men, armed with pikes and guns; when the cavalry were about thirty yards from the wall, those from behind the wall levelled their pieces over the wall, and fired a volley; that there was no firing by the military at the time that Lieutenant Hodgson rode up and desired them to surrender, upon which a few more shot were fired; that they got over a slap. The people still resisted; that a piece missed fire which was presented at Lieutenant Hodgson; that several shots were fired before they gave way; then they run in all directions; they were pursued and taken prisoners; that all who were so taken prisoners were engaged in that affair; he identified the prisoner as being of that party, and says he saw him again in Edinburgh Castle; that arms were found upon the spot; that several ball cartridges were taken from different prisoners; that there was a bag taken from one of them, containing ball, and cartridges, and powder; he identified Murchie and Johnstone, and he also identified Baird, Alexander Hart, and Benjamin More, as being all in the battle; and he identifies positively the gun which was levelled at Lieutenant Hodgson as being a kind of blunderbuss.

The next, Gentlemen, is the evidence of Thomas Cook, who is a serjeant in the 10th Hussars. He swears, that he left Stirling about six o'clock in the morning of the 5th of April, to go to Kilsyth. At about 7 or 8 miles from Kilsyth, he met 5 or 6 men armed with different sorts of arms, pikes, pistols, and firelocks;—he identifies the prisoners, Hardie and Murchie, as being of that party: that upon his coming close up to them they formed across the road; the prisoner was dressing them by the left: that is, in other and most fatal words, the prisoner acted as the leader or officer of that small party, doing the duty of an officer when he draws his men up to see that they stand regularly in line. They called upon the witness to halt. He asked them what

they wanted; and one of them said, they were seeking for their rights, as honest men ought to do. Now, Gentlemen, attend here to what is the language of this Address. This man said they were seeking their rights, and one of the paragraphs in the Address following that with regard to the soldiers is this: "We earnestly request of all to desist from their labour from a certain day," just what the prisoner is proved to have done, when a gentleman states he saw him marching about the streets of Glasgow with bands of men, "to desist from their labour from and after this day, the first of April, and attend wholly to the recovery of their rights; and consider it as the duty of every man not to recommence until he is in possession of those rights which distinguishes the free man from the slave;" so that you see this party here using the very identical language of that proclamation under which they originally set out,—they were seeking their rights. The witness then goes on to say he dissembled with them; he answered he was very sorry for their case. They said, you are an orderly man, where are your dispatches? Was it in the prosecution of their rights; was it in the prosecution of any private purpose, or the redress of any local or private grievance peculiar to them, that they were to take the dispatches from a man carrying dispatches from one officer to another? or was it such conduct as one body of armed men would use against another body of armed men, to see what the orders were, under which the others were acting, and to see what force might be brought against them from other quarters? What would the most regular general do, but to see if the prisoner had any paper which would give him any information with regard to the danger he might run in marching further on? He said that he had no dispatches: that he himself had been left behind at Stirling. That they conceiving he was left behind from drunkenness or something, said, that is bad for you.—They wanted to take his arms, but one said No: that he told them he was a friend of their cause: that he was a weaver, and had a wife and children of his own, and was very sorry for their situation: that they asked him if he could read; he said, yes: that upon his telling them that, they took out a roll of hand-bills and gave him one. He cannot say who gave it to him, but one of the

party, of which the prisoner is proved to have acted as leader and commander.

Now, Gentlemen, I state to you as the most undoubted law of the land, that the leader of a party in arms must, in the nature of things, be answerable for what is done by that party under his command. Take it in this shape, and it will be intelligible to you in a moment. Suppose this prisoner was the commander of the whole party of fifty or sixty, would it be tolerated for a moment to say he was not responsible for every shot fired, and that he could not be convicted except for the use of the weapon in his own hand? A commander, then, who seldom fights at all, is not answerable for the Treason; that is the inevitable and legal consequence. If the argument of the prisoner is well founded, that this man is not answerable for the acts of the party under his command, then a general of a treasonable army is the safest of all men, because if he is not answerable for that which others may do, he seldom does any thing in the way of fighting himself. Gentlemen, he saw this paper delivered; he was in the command of that party; if he did not know what it contained, he should have called upon them to shew it to him—Sir, let me see that before you give it to a dragoon, so as to implicate me; but he did no such thing; he saw it given and approved of it, if he did not order it; and he must be held in law, to know what the paper was, or at least in law he is answerable for it; and, Gentlemen, accordingly, in a noted case in the reign of King William, the case of Lord Preston, a Scotch Peer, who was tried in England, there was a paper found in his desk, containing a statement of a scheme of invasion by the French, which was read and received as evidence against him, of a purpose to compass and imagine the death of the King, although it was not proved or attempted to be proved, that he had communicated that paper to the enemy,—nay, I do not know that it was proved that he knew the contents of that paper; but being a paper in furtherance of a traitorous correspondence, in which he was proved otherwise to be concerned, it was received against him. Here you have the prisoner at the bar seeing a large roll of hand-bills taken out by one of his party, and one of them handed to the serjeant of Hussars, because they believed he was one of their friends:

therefore, Gentlemen, the prisoner at the bar is implicated in the strongest manner with this paper so given to the serjeant; it was given in his presence, it was given by his permission, it was given by people over whom he had assumed, and was exercising an authority and command, whom he might have restrained from giving it, if he did not approve of it; and if he had attempted to restrain them, the serjeant would have heard it, and then he might have shaken himself loose from the delivery of that paper. The serjeant gave that paper to Lieutenant Hodgson, who returned it to him; he put it in his pocket, and afterwards gave it again to Lieutenant Hodgson before he reached Bonnymuir; he never had any other paper of that sort, and is quite sure that the paper which he received from the party upon the road was the same paper that he gave to Lieutenant Hodgson. He says, that on the party reaching Bonnymuir they came into a kind of a bog on their right, and they turned to the left towards the angle of a wood. There, Gentlemen, were the means of escaping. A wood was at hand, into which they might have escaped, as you know well the advantage a person on foot has in a wood over a person on horseback. That the party fired some shot at them from behind a wall where they were, from thirty to forty yards distant; that no shot had been fired by the cavalry before that took place; that they got through a slap, and a skirmish then took place; that he saw the man who wanted to take his arms, that is one of the five or six who were with the prisoner at the bar, but he was not taken; that eighteen were taken; that he escorted them to Stirling Castle, when they were delivered to the constable; that all the eighteen that were taken were engaged in the skirmish; that some arms were found after the affair was over; the witness picked up a pike himself.

On his cross-examination he says, that his reason for telling them that he was friendly to their cause, and that he was a weaver, was because he was a weaver, and he knew the situation of their affairs. He cannot recollect the individual by whom the hand-bill was delivered to him,—it was one of the five or six, and they all saw it.

Then, Gentlemen, there is the evidence of Lieutenant Hodgson, a Lieutenant in the 10th Hussars, that, on the

5th April, he marched early in the morning from Stirling to Kilsyth, where he arrived at about half past five; that their horses were jaded by having made so quick a march, in about an hour and a half. After this he received information from Mr Baird of the Yeomanry, which induced him to put his party in motion. This was about a quarter of an hour before he saw Cook, who had been left behind at Stirling. Cook shewed him a paper when Lieutenant Davidson was present, which he looked at, and saw it was an Address to the People, and returned it to Cook. The party set out from Kilsyth, ten or twelve of the Hussars being mounted on Yeomanry horses. The party which he commanded consisted of thirty-two, of which sixteen were Hussars; that they went in the direction of Falkirk; that on the road he asked Cook for the paper, which he had returned to him at Kilsyth, and received it from him; that they got intelligence that the men who had stopped Cook, had gone to Bonnymuir, to which they proceeded, and found them on the hill, when they gave a cheer, and ran down towards a wall, from behind which they fired on the cavalry two or three shots, or more; that he advanced close to the wall, and called on them to lay down their arms, and ordered his party to cease firing, which they did; that he desired them five or six times to lay down their arms; that he, with a few of his men, got through a gap in the wall to the same side they were on; that he presented his pistol at a person who appeared to be their leader, which flashed in the pan, and did not go off.—This person was Baird, whom he identifies, and who, he says, had presented his musket at him the whole time he was getting round the wall; that when they were getting through the wall they used pikes against his cavalry, as an obstacle to their passing the gap; that the witness was wounded by a pike in the hand, and his horse was so wounded that he died in a short time; that the serjeant also was wounded in two places; that they succeeded in taking eighteen prisoners, whom they brought to Stirling, besides one whom they left in the field much wounded; that the arms that were taken consisted of sixteen pikes, a pike handle, a pitchfork, five muskets, or guns of different kinds, and two pistols, with some ammunition, which he saw col-

lected together, and which were brought to the Castle in this town, along with the prisoners; he identifies the prisoner and Baird, and the boy Johnstone, and Hart and Gray, and Moir and Murchie, as being of the party who were in that skirmish; that he is quite certain that all the prisoners who were delivered over to the custody of the officer in this place were in the skirmish; they were kept close together as they were conducted along the road, surrounded by the cavalry; that he observed Baird and Hardie walked in the rear the greatest part of the way, arm in arm. Then he told us very fairly that he had not possession of the paper which he himself received from Cook during the whole of the time, as it was one night in the possession of Colonel Taylor, the commanding officer of the regiment; but that he had read it before he so delivered it to Colonel Taylor, and that the paper he received back again from Colonel Taylor, he did believe to be the identical same paper he had so delivered to him, at least he is quite certain it was in words the same. Therefore, Gentlemen, when the question comes to be *quo animo*, with what intentions, with what object, this accused party marched out of Glasgow, and so engaged these troops, it matters not whether that paper was found upon the prisoner, it is enough if they knew of that address from any copy; and that the prisoner knew of it, is proved by Mr Hardie, who saw him reading it, and hearing it read at the watch-box; it is proved against him by his having permitted one of his party to deliver one copy to the serjeant, which copy, or one similar to it, was produced by Lieutenant Hodgson, and sworn to be the same in words.

Then you have the evidence of Lieutenant Davidson to the same effect, with regard to the skirmish, which is proved, but not denied; he says they resisted with pikes.

Then Alexander Coutts, the gardener to Mr Davidson, says, he is a private in the Kilsyth troop of the Stirlingshire Yeomanry cavalry: That he was one of the party who went from Kilsyth to Bonnymuir in the beginning of April last, and was present at the skirmish which took place there: That some shots were fired at them across a wall: That the cavalry got through a gap in the wall, in which they were opposed with guns and pikes by these men; and he identi-

fies Baird and Hardie; that he saw them taken prisoners. He saw the prisoner active while he was getting through the slap; he had a pike in his hand.

Then you have the evidence of John Davidson, who was in the skirmish, after the close of which, he saw a bag taken from one of the prisoners by a hussar, into which were put several parcels of ball cartridges and powder that were taken from the persons of several of the prisoners: That he saw two or three of them searched, and ball cartridges found upon them, which were put in the bag that the ammunition was in.

Then you have the declarations of the prisoners. Now, Gentlemen, with regard to declarations, I need not tell you, who, I dare say, many of you, have served on Juries, or have been present at trials in this country, that the declarations, if proved to have been emitted freely and voluntarily, and when the prisoner was in his sober and sound mind, is competent evidence, and it is so in England. Now, Gentlemen, what are these declarations? this prisoner was not present at the examination of any one of the witnesses who have this day appeared against him; he knew not what they had said; he knew not what they were to say this day; he was at liberty to make his own story as he pleased—to tell the truth, or not the truth, as he pleased upon his examination, to make the fact exactly as he thought it most favourable for himself. Alas, without knowing what these witnesses had said at that time, or were to say this day, you will find that his declarations, in almost every particular whatever, certainly in all material particulars, do corroborate the evidence of every one witness that has been examined in this cause. This, Gentlemen, no doubt, may be said to be unfortunate for the prisoner, and it is unfortunate; it may be said, to be hard against the prisoner to use it against him; but it is lawful evidence, it is evidence which he furnished voluntarily, without compulsion, in his sober senses, and in his sound mind. Why he made that confession, I cannot tell, and you cannot tell; he was at liberty to make it, or not to make it, as he pleased; but he has made it,—there it is, you will read it, and compare it with the evidence before you.

Gentlemen, I regret that I have detained you so long. But, after the eloquent appeal to your passions, and the attempt to lead you away from the evidence, for not one word of evidence was read to you on the part of the prisoner, or attempted to be read in any thing like the words of the witnesses, it was my duty to call your attention back to the facts of this case. It is the facts of which you are to judge as applicable to the law; and the law, as I have laid it down to you, as applicable to the facts. You will now retire, and consider of your verdict. I have no doubt it will be a verdict according to your consciences; and if it is not agreeable to my view of the evidence, that it will be, because in your consciences you cannot concur in opinion with me. I have given you my opinion, because I have always done so when I have sat in the chair now filled by my brother on my left hand in the Court of Justiciary; I always thought it was a duty I owed to a Jury to let them know what my opinion was, that they might canvas it on the one hand, knowing, I hope, that my character was such, that they would not lightly differ from me; but, at the same time, knowing that they would boldly differ from me if they were compelled to do so. But, on the other hand, if their opinion was against the prisoner, it would be satisfactory for them to know that such also was the opinion of the judge. You will specify the counts on which you find the prisoner guilty, if you find him guilty at all.

The Jury withdrew at five minutes before one o'clock, and returned into Court in twenty minutes, finding the prisoner *Guilty on the second and fourth Counts of the Indictment, and Not Guilty upon the first and third Counts.*

The Court adjourned at one o'clock on Friday morning the 12th, to 10 o'clock the same morning.

THE

TRIAL

OF

JOHN BAIRD.

Stirling, Friday 14*th July*, 1820.

PRESENT.

The Right Honourable DAVID BOYLE, Lord Justice Clerk.
The Right Honourable Sir SAMUEL SHEPHERD, Lord Chief Baron.
The Right Honourable WILLIAM ADAM, Lord Chief Commissioner.
The Honourable ADAM GILLIES, Lord Gillies.
And Others, His Majesty's Justices, &c.

JOHN BAIRD was set to the bar; and Thomas M'Culloch, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clarkson, Thomas Pink, Robert Gray, James Clelland, Alexander Hart, John Barr, William Smith, and Thomas M'Farlane, were placed behind him.

The Clerk then gave the prisoner his challenge in the usual form, and proceeded to call over the names of the Jury, beginning, by consent of the Lord Advocate, and the Counsel for the prisoner, from that part of the panel at which he left off on the trial of Andrew Hardie; and as each Jury-

man answered to his name, the Clerk put to him the usual question as to being possessed of freehold property to the value of 40s.

John Mitchell, tanner—sworn.
Thomas Smart, tanner—sworn.
Alexander Robertson, of Candy, gentleman—challenged by the prisoner.
John Russell, of Dallgreen, gentleman—challenged by the prisoner.
James Hodge, baker—sworn.
George M'Callum, of Thornhill, Esq.—challenged by the prisoner.
John Callander, of Lady's-mill, gentleman—challenged by the prisoner.
Alexander Balloch, of Middlefield, gentleman—challenged by the prisoner.
John Hugh, of Gartcows, gentleman—challenged by the prisoner.
John Mitchell, of Mungal-mill, gentleman—challenged by the prisoner.
John Burns, writer—challenged by the prisoner.
Peter Bell, merchant—sworn.
Robert M'Kechnie, writer—challenged by the prisoner.
William Storie, writer—sworn.
Alexander Monro, writer—sworn.
John Thomson, vintner—challenged by the prisoner.
James M'Pherson, vintner—challenged by the prisoner.
Colin M'Nab, of Grangemouth, merchant—challenged by the prisoner.
James Milne, merchant—challenged by the prisoner.
Arthur Pollock, merchant—challenged by the prisoner.
Walter M'Target, merchant—challenged by the prisoner.
Alexander Dallas, gentleman—sworn.
James Buchanan, of Corntoun, portioner—sworn.
Alexander Monteath, of Caldhame, gentleman—challenged by the prisoner.
John Buchanan, of Berryhill, gentleman—sworn.
Peter Muirhead, excused on account of illness.
James Ewing, seedsman—sworn.

Thomas Johnston, of Falkirk, stationer—challenged by the prisoner.
Alexander Learmonth, grazier—challenged by the prisoner.
John Rankin, bookseller—challenged by the prisoner.
Robert Balloch, grazier—sworn.
John Shaw, land-surveyor—sworn.

The Crown made no challenges.

THE JURY.

JOHN MITCHELL,	ALEXANDER DALLAS,
THOMAS SMART,	JAMES BUCHANAN,
JAMES HODGE,	JOHN BUCHANAN,
PETER BELL,	JAMES EWING,
WILLIAM STOBIE,	ROBERT BALLOCH,
ALEXANDER MONRO,	JOHN SHAW.

The Jury were charged with the prisoner in the usual form.

Mr HOPE opened the Indictment.

Mr Solicitor-General.—May it please your Lordships,—Gentlemen of the Jury,—In the progress of the lamentable, but indispensable, investigation into those events by which the public order has been recently endangered in this country, and by which the constitution has, in no slight degree, been attempted to be subverted, I have now, upon this second day of our sitting, to call to your attention, and to introduce for your consideration and determination, the case of John Baird, the prisoner at the bar. He is brought here upon an indictment, wherein he is charged with the crime of High Treason. That Treason, as you will find stated in the abstract of the indictment, consists, in the first place, of compassing and imagining the death of the King. It consists, in the second place, of levying war against the King. It consists, in the third place, of compassing, imagining, conspiring, and devising to levy war for the purpose of obtaining an alteration in the constitution, a change in his Ma-

jesty's councils, or a change in the councils of one or other, or both, Houses of Parliament.

Such is the general character of the indictment upon which the prisoner is brought here; and before stating to you generally, which it will be my duty to do, the evidence by which these charges are to be conclusively and indisputably brought home to him, it is incumbent upon me to give you some account, a brief and general account, of the law of Treason, upon which this indictment is founded.

Gentlemen, the law of Treason in Scotland, that law by which the constitution of Scotland was protected prior to the happy union with England, was ill-defined, uncertain, and arbitrary in its nature; and it was one of the first, and not the least fortunate results of the Union, that by one general enactment which immediately followed it, the law by which the public order is protected and established, was introduced as part of our law from the more mature system of England.

Gentlemen, it is not here necessary to enter into any general speculations into the peculiar advantages or disadvantages which may attend that system of law, or any other system, or into possible improvements which more fertile imaginations—which the imagination of others, more given to trust in theoretical ideas of perfection,—might suppose to be capable of being introduced into our system. It is my duty to tell you what that law is, and it is your duty, and your solemn and inflexible duty, to give effect to that law as it shall be explained to you from the best authorities. This much, however, I feel myself enabled confidently to say, that the law which you are this day to administer is expressed in terms remarkable for its simplicity and precision. Gentlemen, it is contained in a statute of Edward III., from which I will read to you all that it is indispensable for you to have in your view. "Whereas," that statute says, "divers opinions have been before this time, in what case Treason shall be said, and in what not, the King, at the request of the Lords and of the Commons, hath made a declaration in the manner as hereafter followeth: that is to say, when a man doth compass or imagine the death of our Lord the King, or if a man do levy war against our said Lord the King in his

realm, or be adherent to the King's enemies in his realm, giving to them aid and comfort in the realm, or elsewhere, and thereof be proveably attainted of open deed by the people of their condition." From this you will observe, that there are two distinct propositions, two distinct definitions of Treasons laid down, which it is necessary for you to attend to. The first is, "when a man doth compass and imagine the death of the King, and be thereof proveably attainted, by open deed, by the people of their condition." And the second is, "if a man do levy war against the King in his realm," and, in like manner, be thereof proveably attainted, by open deed, by the people of his condition.

Gentlemen, it must occur to you, and to every one, that in the first of these Treasons there is a peculiarity. In general, in the principles of law by which the life of man is protected, no one is held to be guilty of murder, no one is brought within the sanctions of the completed crime of murder, unless the fact of homicide has taken place; but here, for reasons, to the wisdom of which every man must assent, it is written, that if a man doth compass and imagine the death of the King, such shall be reckoned the completion and accomplishment of a crime; and therefore, if there had been no other terms but these, a man must have been doomed to death as a traitor for nothing else but the thoughts and sentiments of his heart, for those thoughts and sentiments for which, in every other department of the law, a man is considered only to be responsible to God, to whom all hearts are open, and from whom no secrets are hid. But looking to the dangers of subjecting to the investigation of any human tribunal—to the investigation of a tribunal which must be administered by the imperfect faculties of man, such an offence resting upon such an evanescent thing as a man's thoughts, a qualification has been introduced, which throws around the person who is accused a protection quite sufficient for the safety of every innocent man; and accordingly, the statute has added these terms, "and be thereof proveably attainted, by open deed, by persons of his condition."

Gentlemen, it is a matter of no consequence here to inquire,

although it has been disputed by subtle lawyers, whether "attainted by open deed" shall be considered as part of the definition of the offence, or whether it shall be considered as the sole evidence by which the thoughts of the heart shall be discovered. Lawyers have differed on that, as they have differed about many subtle things; but all lawyers have agreed upon the substance, and upon the justice of it, as I have now explained it to you; and, accordingly, Judge Foster, the ornament and great luminary of English jurisprudence—a man remarkable for his attention to the liberties of the subject—so expresses himself. After having adverted to that distinction which I have briefly noticed, he says, (Foster, p. 203,) "Overt acts undoubtedly do discover the man's intentions, but I conceive they are not to be considered merely as evidence, but as the means made use of to effectuate the purposes of the heart. With regard to homicide, while the rule *Voluntas pro facto* prevailed, the overt acts of compassing were so considered. In the cases recited by Coke, there were plain flagitious attempts upon the lives of the parties marked out for destruction; and though in the case of the King, overt acts of less malignity, and having a more remote tendency to his destruction, are with great propriety deemed treasonable, yet still they are considered as means to effectuate, and not barely as evidence of the treasonable purpose. Upon this principle, words of advice or encouragement, and, above all, consultations for destroying the King, very properly came under the notion of means made use of for that purpose; but loose words not relative to facts, are at the worst no more than bare indications of the malignity of the heart." It is quite clear, however, that, whether the terms "attainted by open deed" be held to be part of the definition of the crime, or to be the sole and peculiar evidence by which it is to be established, the result is the same to the person accused.

Gentlemen, the purpose and only object of the law by which Treason is defined, is the protection of the constitution—the protection of all those establishments by which the general polity of the state is upheld,—the protection of the three estates of the kingdom. You are aware of the pe-

culiar function of the Kingly Estate ; the King constitutes the third Estate of the kingdom, to that Estate are committed the whole active or executive powers, without which the laws can have no operation, without which the laws cannot for one instant be enforced, and would be nothing else than a dead letter. In that respect, the Kingly Estate is invaluable; and it is impossible that the Constitution could exist for an hour without it. But, besides the general execution of the Laws, to the Kingly Estate is committed the duty of protecting and supporting all the other establishments in the kingdom ; and it is the duty, the inflexible duty, of that branch of the Constitution, to interpose itself by means of the Executive power which is committed to it, at the hazard of its utter dissolution, at the hazard of the personal destruction of the individual to whom those powers and that duty are committed, between all violence and all forcible innovation which may be attempted to be directed against either of the other two estates, or against any of the Constitutional establishments of the kingdom.

I have enforced this upon your attention, in order to introduce next to your notice, certain constructions which the general terms of the statute that I have read have necessarily undergone; and although, in popular language, those are called constructions, and although, in popular idea, there is a great abhorrence from early associations with our history, at the term constructive Treason, I am to state to you that these do not fall under any of those instances of constructive Treason which have given rise to those just feelings rather than prejudices, but that they were in fact direct, necessary, inevitable inferences, not merely from the terms of the statute, but what is infinitely better, from its reason, from its intendment, from the only definable, conceivable, or justifiable object for which such a branch of the law ought to be or can be introduced into any system. Therefore, Gentlemen, by inference, or construction, or by whatever term it may be denominated, it is held to be a compassing and imagining of the death of the King, if any conspiracy is entered into for the purpose of imposing any restraint upon the King in the exercise of his functions, if any conspiracy is entered into for the purpose of controlling him in the

exercise of those powers which the Constitution has conferred upon him. It is his duty, as the head of the Government and Constitution, to protect himself, as I said, against such restraint, at the peril of his life, by those means which are entrusted to him; and it is justly held in law, that such attempts to impose restraints in the exercise of his functions and constitutional duties, are considered as directly and necessarily endangering his person and life, and therefore fall under the definition of compassing his death.

In the next place, there is another construction which, perhaps, may result into the same thing. If any conspiracy be entered into, any devices engendered, which are evidenced by open deed in furtherance of the fulfilment of them; if any devices or conspiracies are so entered into for the purpose of deposing the King, it is held under the same safe and just construction, that this also is a compassing of his death, not merely upon the ground which I have stated to you, that it is his duty to resist such deposition, even to the death, but also from this notorious fact, proclaimed by our history, and by all history, that the space between the deposition and the death of Princes, is too narrow to be estimated.

Gentlemen, there is a third construction which the statute has upon the same principle received, viz. that if any man levy war against the King, actually levy war, (what may or may not be a levying of war, may be a different question, to which I will speak by and by,) but if a man levy war against the King, and be thereof proveably attainted by open deed, such a proceeding is included under a compassing and imagining of the death of the King. He is the head of the executive, forming the third estate; he is at the head of the army; he is entitled to lead on, and frequently has led on to battle, and it is impossible to contemplate the collision of that army with another army in rebellious array, without the conviction, that, if the result should be unsuccessful to the King's army, such success could not be accomplished without necessarily and inevitably endangering his life, both his life and the existence of the Kingly Estate. Therefore, Gentlemen, in the indictment before you, if upon the facts, as they shall be proved to you, it shall appear that there did occur a levy-

ing of war against the King, you are not only entitled, but, I should say, you are bound to find the prisoner guilty, under the first count in the indictment.

The next count in the indictment is that of levying war; it forms, as I have already explained to you, both a separate Treason in itself, and it forms also an overt act of the first Treason to which I have already spoken; and the question for your consideration will be, under the second count of the indictment, whether or not, according as the facts shall be proved, there has occurred a levying of war, as the law so understands those terms; and in order that you may apply the law to the fact, I shall say a word or two upon what is or is not levying war.

Gentlemen, there are two things to be considered under this branch of the law—the first is, whether the circumstances under which the parties are charged with the crime, are such,—that is, whether they are so arrayed, so formed, so prepared, so armed, so possessed of force and of hostile weapons, —as to bring them under the rational description of an armed force. This is a matter of fact; a matter of proof to which nothing else can be required but the application of a very small portion of common sense. Thus much I may say to you, however, in general, that, towards the establishment of the fact of levying war, I mean as to the manner of it apart from the object of it, to which I shall speak afterwards, it is not necessary that the men should be regularly appointed with all the pomp and circumstance of war. It is not necessary that they should be uniformly clothed and equipped, or that they should be uniformly armed, or that their arms should be of the most destructive kind which the inventions of modern war have prepared. It is quite sufficient, if, either from the number or from the manner in which they are appointed, they are so constituted as to attempt to effect the purpose which they have in view by force of arms. But I cannot anticipate, that, on this part of the case, you will have room even for the slightest doubt. It is stated in Foster, page 218, § 9, "An assembly armed and arrayed in a warlike manner, for any treasonable purpose, is *bellum levatum*, though not *bellum percussum*, listing and marching

are sufficient overt acts, without coming to a battle or action; so cruizing on the King's subjects under a French commission, France being then at war with us, was holden to be adhering to the King's enemies, though no other act of hostility was laid or proved." Therefore, it is quite sufficient if you shall be satisfied that there was a preparation of warlike instruments, and an array and preparation of the men with a view to the accomplishment of their object by force, in order to bring them within that part of the law, in so far as that part of the law is concerned.

But the next and most important point for your consideration is this, What was the object for which this levying of war was made? If it should clearly appear that the war is levied for the accomplishment of some private purpose, for the satisfaction of some private revenge, for the demolition of some private property, for the accomplishment of some particular robbery, for a smuggle for instance, or for any purpose not of general concernment; if you are satisfied of that (the manner in which that is to be proved is another question) then, to be sure, whatever may be the crime for which the prisoner may be amenable to the laws of man or of God, it is not within the sanctions of Treason that he can be placed. No lawyer will intimate a doubt upon that subject, and I should be the last man upon earth to state a doubt upon it. But, on the other hand, if in the whole proceedings which shall be established in evidence before you, it shall be proclaimed beyond the reach of reasonable doubt, that the object was one of general concernment—if, for instance, it shall appear to have been one stated to be for the redress of grievances, if it shall appear to be one for the accomplishment of an alteration in the constitution, an alteration in the mode of election, an alteration in the constitution of Parliament, an alteration in even the minutest but still sacred particulars of that constitution under which the happiness of this country is protected, and its national grandeur has been established to a degree beyond the reach of imagination—if it shall appear to you, that, in the minutest particular, it was their intention to touch this sacred fabric, then I say that it is impossible

for an instant to dispute that they are placed in the predicament of Treason, and must deservedly suffer the sanctions which the law has annexed to this the greatest of crimes.

Gentlemen, I cannot admit, although it is to statute that you are to look for the precise definition of the crime of Treason, although it is to the common law or to the statute law that you are to look for the precise definition of all crimes subject to the determination of judicial establishments, I cannot admit that there is any thing here arbitrary, and not founded on those great principles of morals on which laws for the repression of crimes are established. Because I say it is quite impossible to contemplate the consequences which must arise from successful Treason, it is impossible to contemplate the subversion of law, it is impossible to contemplate the subversion of the constitution, the anarchy, murder, plunder, and bloodshed which are necessarily involved in the results of successful Treason, without seeing and feeling that every crime against which God and nature have set their seal, is involved in the fearful consequences of successful Treason; and, therefore, I hold that the crime of Treason is not of so arbitrary a definition or establishment as has been supposed, but that it resolves into, and is founded upon, those great and fundamental principles to which all criminal law and public order, and all the social relations under which the protection and happiness of man are progressively established, must be ascribed,—I say the law of Treason is founded upon these reasons, and rests as much on the moral principles inherent in the nature of mankind, as any or all the other branches of Criminal Law.

There is another count in this indictment, namely, compassing, conspiring, devising, and imagining the levying of war—the use of hostile force for the purpose of overawing either House of Parliament, or the accomplishing an alteration in the constitution. Gentlemen, that Treason is established by the 36th of the late King, a recent statute; and it humbly appears to me, that that statute did necessarily and justly introduce a certain extension of the previous definition of Treason. It did not necessarily follow in many cases which might be imagined,—

and I need not go into the authorities upon it—it did not necessarily follow that the conspiring and devising to levy war for those purposes fell under the first category of Treason, namely, compassing and imagining the death of the King; and certainly it did not, by any construction which has yet been established, and did not, under the strict terms of the statute, fall under the second category of Treason, levying of war; because it was necessary, to the complete establishment of that offence, that war should be levied; and a conspiring to levy war, provided it had not arrived at the whole preparation of the means for its commencement, was not sufficient to establish the complete crime on that ground. But most justly the legislature considered that the constitution of the two estates of Parliament deserved and required to be as sacredly and as jealously protected as the third estate of the kingdom. And, accordingly, it has just established the same definition of crime, of conspiring and devising, compassing and imagining, the application of hostile force to either House of Parliament,—it has just established, in reference to the constitution of the deliberative assemblies of the kingdom, that to be a precise Treason, which it had long before declared to be Treason, in reference to compassing and imagining the death of the King.

Now, Gentlemen, I am aware that I have, perhaps, detained you rather longer than I ought to have done with this explanation of the law, and I am now briefly and generally to state to you the species of facts—the general outline of facts, which are intended to be established before you; and the first, and notorious, and most criminal fact, which will be introduced to your notice, is that which is known by the affair or the battle of Bonnymuir—a battle that certainly was not a very sanguinary one; but the prisoner at the bar ought to feel, if he does not, and all others ought to feel, that he and his associates are now enduring the calm and impartial course of the law, only in consequence of the signal courage and humanity which distinguished the military officer who had the command of the King's troops upon that occasion. In that affair the prisoner at the bar, it

will be proved to you, was actively, distinctly, and continually engaged, and, therefore, beyond a doubt, the main and principal fact of Treason, which it is incumbent upon him to defend himself against, and to exculpate himself from, will be clearly established; and I should hold, although it is not necessary, unless hereafter it should be pleaded to that extent, that, the opposition to the King's army being proved, that act itself must be clear and satisfactory evidence as an overt act of levying war against the King, and that there is no way in which the prisoner can escape from the inference of that fact, but by shewing that he had a private object in view.

But, Gentlemen, the evidence will trace the matter a little further. It will be shewn that one of the persons, also actively engaged in that affair, was actively engaged in the publication and dissemination of an Address, in which the object of their daring proceeding, and of that hostile encounter, is clearly and distinctly explained. I state to you, (but you will take the law, as I before said, from his Lordship;) but, in the meantime, I state to you, under his Lordship's correction, that if it shall be proved, that in the party with whom the prisoner was associated, with whom he was in active co-operation, any one, or more, were possessed of, and did disseminate and publish,—or that upon his person there was found—a paper declaratory of the purpose, and relative to the purpose, and that such paper does indicate clearly a treasonable intention, if the overt act in which they are found engaged was not of itself sufficiently explanatory of the general purpose, you are bound and entitled to look to that paper as affording evidence, not merely against the person upon whom it was found, or to whom the dissemination of it is brought home, but as against one and all of the persons who were co-operating with him in the active proceeding in which they were engaged. This is necessarily the conclusion; and I state it to you as the clear law in all conspiracies, and in all proceedings in which the co-operation of more than one person is found actually to be proved.

It will be proved to you that a person actively engaged

in that affair, a person well known to the prisoner at the bar, was possessed of, and did disseminate, and was instrumental, on more occasions than one, in the publication of a treasonable address, about which no lawyer, no judge, no man of unlearned common sense, can entertain the most remote doubt. I am stating, Gentlemen, this part of the law, not upon my own authority, of the imperfection of which none is more sensible than myself, but I read it to you from a book of unquestionable authority, I read it from Phillips's Law of Evidence, p. 96, 97: "In prosecutions for conspiracies, it is an established rule that, where several persons are proved to have combined together for the same illegal purpose, any act done by one of the party in pursuance of the original concerted plan, and with reference to the common object, is, in the contemplation of law, as well as of sound reason, the act of the whole party, and, therefore, the proof of such act will be evidence against any of the others who were engaged in the same general conspiracy, without regard to the question whether the prisoner is proved to have been concerned in that particular transaction. This kind of evidence was received on the trial of Lord Stafford and of Lord Lovat, on the trials for High Treason at the Old Bailey in 1794, and in the case of Stone in 1796; in which last case the rule was completely settled. In that case, evidence having been given sufficient for the Jury to consider whether the prisoner was engaged in a conspiracy for treasonable purposes, it was determined that a letter written by one of the conspirators in pursuance of the common design, (although the letter had not been traced into the hands of the prisoner or to his knowledge,) was admissible in evidence as the act of the prisoner himself. The acts of the several conspirators, who are engaged with the prisoner in one common object, are evidence against him, though he may not have been directly a party to them; they are evidence as acts connected with, and in conformity with, his own acts."

Gentlemen, I need not multiply authorities upon a point that stands so well supported by reason as well as law; but you have evidence of their general object proclaimed, I say,

not merely by the notorious act in which they were engaged, but also with a direct connexion with that Address to which I have adverted, and I shall read some parts of it before I proceed further.

Gentlemen, the Address, which will be read in evidence before you, is in these words—I shall read merely part of it; you will have an opportunity of reading it yourselves—"Address to the inhabitants of Great Britain and Ireland. Friends and Countrymen—Roused from that torpid state in which we have been sunk for so many years, we are at length compelled, from the extremity of our sufferings, and the contempt heaped upon our petitions for redress, to assert our rights at the hazard of our lives, and proclaim to the world the real motives which (if not misrepresented by designing men, would have united all ranks,) have reduced us to take up arms for the redress of our common grievances. The numerous public meetings held throughout the country has demonstrated to you that the interests of all classes are the same, that the protection of the life and property of the rich man is the interest of the poor man; and, in return, it is the interest of the rich to protect the poor from the iron grasp of despotism; for when its victims are exhausted in the lower circles, there is no assurance but its ravages will be continued in the upper; for, when once set in motion, it will continue to move till a succession of victims fall;"—and then follows some sentences which I need not read to you. It proceeds to say, "Liberty or Death is our motto; and we have sworn to return home in triumph, or return no more;" and this manifesto bears to have been issued by order of a Committee of Organization, for forming a Provisional Government—that is, by a Committee who had it in their contemplation to supersede the whole Constitution—the House of Commons; all the judicial establishments; every thing on which the happiness of the country rests; and to substitute in the place of them a Provisional Government, devised by unknown individuals, who chose, as their instruments for accomplishing that prodigious revolution, persons of the condition of the prisoner at the bar.

Gentlemen, it will be proved further to you, that the prisoner, at a period prior to this open conflict with the King's troops, was actively engaged in the procuring and preparation of arms, actively engaged in the procuring, purchasing, and preparation of pikes; that weapon which, it appears, was used with no slight effect in the conflict which afterwards took place. Gentlemen, it will not do to say that the unfortunate circumstances of the country, the depression of the manufacturing classes, is any apology or alleviation of such proceedings. If such topics are stated, and it is probable they may be stated, I apprehend, that, so far from any justification, they furnish grounds to prove what was the general object of the parties so engaged. But what can you or any man conclude, if an armed multitude are found to be assembled, and who state to you that they are so assembled because they are oppressed, because the government of the country is such, that due provision has not been made for the class to which they belong? Why, the conclusion to be drawn from it, if we are to go to inferences from circumstances of that kind, is, that they are discontented and dissatisfied with the order of things; they are impressed with the conviction that they cannot be worse by any change that can be accomplished, and that they are to look for some division of property, or for some advantage or other, in the total subversion of the present order of things.

Gentlemen, there is another document of evidence to which it will be necessary also to refer, as furnishing proof of the purpose, as giving you distinct information as to the general object they had in view, and that document of evidence is the declaration of the party himself. It is indeed in this case a matter of no importance whether the document is founded upon or not, because I do conceive that the case is lamentably and indisputably made out without its assistance —Still it is part of the law of the land, that every man placed in circumstances in which he is suspected of a crime, is, in the first place, subject to an examination by a judicial police—That institution, no doubt, contains some disadvantages to every guilty man, but it is accompanied by great ad-

vantages to those who are conscious of their innocence, and who are really innocent—and, considered as an instrument of justice established for these two purposes, the establishment of innocence, and the conviction of guilt, I do not hesitate to say it is our duty to found upon it, and that it is your duty to proceed upon it, and that it cannot be stated with any propriety or truth, with reference to the administration of justice, as an unfavourable kind of evidence, or as one not entitled to full attention. That declaration will be read to you; and it expressly and fully explains that the purpose of the prisoner was to subvert the constitution of Parliament.

Gentlemen, upon the general complexion of the Treason existing in the present case I need scarcely say one word. Treasons there have been, and rebellions there have been, in times that are passed; but those have been characterized and palliated, in so far as it is possible for Treason to be palliated, by their connexion with some of the nobler sympathies and higher principles of our nature—principles and sympathies most treasonably and criminally misguided, no doubt, but still principles and sympathies connected with the best interests of society. In the case before you it is vain to look for any redeeming quality—here it is beyond contradiction clear, that nothing else was in contemplation but the destruction of our ancient monarchy; the extinction of all its ancient splendour; the destruction of the constitution of Parliament; the destruction of all those institutions upon which our domestic happiness, and the superstructure of our national grandeur, have been built, which never have been surpassed upon the face of the earth, and which, I trust, we shall never shrink from defending, whether in the field, or in the calmer, but no less responsible, duties of the administration of justice, either in your capacity of Jurymen, or any other capacity in which we may be called on to perform our duty.

With these observations, I leave the case in your hands; the more important part of the duty of the Public Prosecutor is done when he brings persons such as the prisoner to

the bar, and throws them on the determination of a Jury; and the determination you shall come to, whatever it may be, we have no doubt will be such as the justice of the case, and the evidence to be adduced, will be found to warrant and demand.

EVIDENCE FOR THE PROSECUTION.

ELLIS HODGSON, Esq.—*sworn.*

Examined by Mr Serjeant Hullock.

Q. You are a Lieutenant in the 10th Hussars?

A. Yes.

Q. At what time of the morning of the 5th of April did you arrive at Kilsyth?

A. About half past five.

Q. Were you accompanied with your troop?

A. By a squadron of the 10th.

Q. I believe you had gone from Stirling that morning?

A. Yes.

Q. How soon after that were you induced to proceed from Kilsyth to some other place?

A. About an hour and a half, I consider, or two hours, not more.

Q. Had you received any information before you set off from any of your own men? from a person of the name of Cook, for instance?

A. Yes, we had.

Q. Do you know a person of the name of Baird in the Yeomanry cavalry?

A. Yes.

Q. Had you seen him before you set off that morning?

A. Yes, we received information from him too.

Q. Was it in consequence of the information you derived from them that induced you to set off again from Kilsyth?

A. Yes, it was.

Q. With what number of men of your own regiment did you proceed, and with what number of the Yeomanry?

A. Sixteen of the 10th Hussars, and, I think, about sixteen of the Yeomanry; I am not positive to the number of the Yeomanry.

Q. Did you proceed with your own troop horses?

A. About ten or eleven of my party were mounted on the horses of the Yeomanry.

Q. Did you proceed on your own horse?

A. I was on a horse belonging to the Yeomanry?

Q. What was the reason of your quitting your own regimental horses?

A. They had had a very quick march in the morning, and I wished to save them as much as possible.

Lord Justice Clerk.—The horses being tired.

A. They were not tired, but I thought they might be if they had much more work.

Mr Serjeant Hullock.—Had they performed a march the preceding day to this place?

A. Yes, they had.

Q. Was the march from Stirling, on the morning of the 5th, to Kilsyth, performed with more rapidity than usual?

A. Yes, it was—it was a forced march.

Q. What time did you quit Stirling, do you remember?

A. No. I do not know exactly.

Q. Have the goodness to state to us the course of your progress from Kilsyth to Bonnymuir?

A. We proceeded in the direction of Falkirk, and received information from the people of the country in what direction a party of armed men were gone.

Q. In consequence of the information which you received in your progress, did you march towards Bonnymuir?

A. Yes, from the information we received from the country people.

Q. Did you see any armed men in the course of your march?

A. When we had gone about nine miles, we saw a body of men armed, at not so much as a quarter of a mile distance.

Q. Of what number might that body whom you saw consist?

A. I fancied about twenty, or a few more or less—I suppose that was about the number when I saw them.

Q. Could you ascertain at that distance the number of their arms?

A. I saw that they were long poles—pikes, I fancied.

Q. Were they upon a road, or off the road, or where were they when you first saw them?

A. They were on the muir, a few yards from a wall—fifty or a hundred yards.

Q. When you came in sight of them, did you accelerate your movement?

A. Yes, we went a little quicker, but we had not been going very quick before that—we increased the pace a little.

Q. Do you recollect the actual pace to which you increased?

A. We put our horses into a canter—we had been trotting and cantering the whole way, and we put them into a canter; but the ground was bad, and we were obliged to go round—we could not go in a direction straight to them.

Q. How soon have you reason to believe the men saw you?

A. I fancy we saw each other about the same time—I know they cheered at the time I saw them—we all saw them within a moment or two.

Q. Did that cheering take place as soon as they saw you, do you suppose?

A. Yes. I do not know whether they consulted together a little first—it struck me they saw us, and then consulted together, and then cheered and came down to meet us.

Q. Then, according to your observation, previous to this cheer, a momentary consultation took place?

A Yes; it was at a distance, so that I could not say, but it struck me so.

Q. It did not therefore appear to be the spontaneous impulse of the moment, but the result of a conference?

A. It struck me so.

Q. At what distance do you think you were when you first saw them?

A. I should think not a quarter of a mile—half a quarter, or a little more—it was across a muir.

Q. After this cheering, which took place in the way which you have described, did they do any thing, and what?

A. After the cheering they ran down towards us, and stationed themselves under the wall, and waited till we came up.

Q. By going down towards that wall, and stationing themselves behind that wall, did they come nearer to you?

A. Yes, they did.

Q. If they had wished to have avoided you they would have gone the other way?

A. Oh yes.

Q. I think you stated something about the difficult ground that you had to traverse?

A. Yes, we could not go straight over the ground; it was so boggy, and one of the Yeomanry directed us—he knew the ground—we had to make a turn rather to the left.

Q. If they had so minded, by going another way, could they have got beyond your reach?

A. They might have escaped very easily, I think, by running away when first they saw us; the ground was so bad we could not have taken more than one.

Q. Then, in your judgment, they might, if they had so thought proper, have got away, without coming in contact with you?

A. Oh, decidedly so; one or two of them might have been overtaken, but certainly not the whole body.

Q. The main body would have escaped?

A. Yes; at least they would have thrown away their arms, and we could not have identified that they had been with arms in their hands.

Q. Upon their taking up this position behind the wall, what did they do?

A. When we came within fifty or sixty yards from them, they fired two or three shots at our party.

Q. Will you have the goodness to state in what position or state your party were in?—you were heading them, I suppose?

A. I was in front of them, and I was advancing towards the wall at the time they fired.

Q. In what way were you advancing?

A. Not in very regular order, the ground was so bad.

Q. You were not the only person exposed in front?

A. No; there were two or three in a line nearly with me. I believe I was in front of the whole—but they were very near me.

Q. And so bearing down upon the wall this fire took place?

A. Yes.

Q. You cannot say whether that fire proceeded from pistols or muskets?

A. I cannot say what arms they were.

Q. Could you ascertain whether the pieces were rested on the shoulder or on the wall?

A. I fancy they were rested on the wall—we could only see their heads.

Q. Was that a good position?

A. A very good position.

Q. A good military position?

A. A very good position.

Q. Then, with that protection, and so concealed, the first fire took place?

A. Yes.

Q. Was that succeeded by another before you reached the wall?

A. There were two or three shots; two I am positive about, and more, I think,—I am not certain.

Q. Did those shots, as far as you could perceive, come from different parts of the wall?

A. Yes, they came from different people.

Q. Were they from different parts of the wall, or were they all close to each other?

A. They were not all together—one or two from different points—perhaps two or three yards, but it is impossible to say what distance they were—they were not close together.

Q. Did you distinguish the sort of arms with which the general body of them were armed at that time?

A. Principally pikes; I thought I saw two or three muskets; I did not see more at the time.

Q. In what way were their pikes held or carried, at the time when they took up this position, do you remember?

A. No, I do not know what position their pikes were in on that side of the wall,—I know on the other.

Q. You kept advancing?

A. Yes.

Q. Did you address yourself to them?

A. I spoke to them, and ordered them to lay down their arms.

Q. More than once?

A. I did it six or seven times.

Q. Did you do it with a voice sufficiently loud to enable the whole of the party to hear you?

A. Quite so.

Q. You are quite sure, if a man could hear at all, he must have heard what you stated?

A. Oh yes, I am quite positive.

Q. Did what you said produce any visible impression upon any of the party?

A. They did not lay down their arms, but they ceased firing; at the same time I had ordered my own party to cease firing; after ordering them to lay down their arms, I ordered my men to cease firing.

Q. In consequence of their not attending to what you stated with respect to their laying down their arms, did you proceed over or through the wall?

A. I went through the gap in the wall with my party.

Q. Did that carry you to the middle of their line?

A. They were on the right of us; it was at a corner of the wall.

Q. State the manner in which they received you on going through that gap?

A. Their pikes were presented to us, and their muskets too; I do not know how many, but I am positive about one.

Q. You say pikes were presented?

A. Pikes were presented as infantry would receive cavalry in an action.

Q. In your judgment, was the mode in which these pikes were placed for your reception calculated to resist cavalry?

A. The way in which they were presented was, but not the way the men were placed; if they had been closer together they could have made more resistance.

Q. Were they, considering the loose and scattered manner in which the men then appeared, placed in the best way in which they could be for resistance?

A. Oh! decidedly so.

Q. Were you yourself personally resisted by any one of that party?

A. The party who appeared to be a leader of the party, presented a short musket at me; from the time I first rode up to the wall it was presented at me.

Q. The party who appeared to be the leader of the party presented that to you?

A. Yes; and it was presented to me the whole time.

Q. Did he follow you with his eye and his piece?

A. Yes.

Q. Did the man with that musket continue stationary, and merely level his piece at you as you would follow a bird flying, or move on?

A. He moved on, and kept his piece pointed towards me.

Q. How near might that piece be towards you?

A. When I rode up to the wall, it might be about 12 yards, and after that it would be two yards.

Q. Then you would have an opportunity probably of distinguishing the man?

A. Oh yes, I know the man, that is the man, (*Baird.*)

Q. You have no doubt of that?

A. Oh no.

Q. Did you say any thing to him particularly during any part of the time?

A. I do not remember saying any thing to him.

Q. Of course you would take care of yourself,—did you endeavour to shoot at him?

A. Yes, I endeavoured to fire my pistol; it flashed in the pan, and did not go off.

Q. You were very near him?

A. Yes, within a yard.

Q. He must have been killed if the pistol had gone off?

A. He must.

Q. You do not know whether he drew the trigger of his piece or not?

A. I cannot swear to that. I have been told so, but I do not know that he did.

Q. Do you remember any other person coming near you with a pike or any other weapon?

A. Yes.

Q. You were wounded yourself?

A. I was wounded through the hand.

Q. Do you know the person?

A. No, I do not know the person; I was engaged with another man at the time; there were two on one side of me, and I was engaged with one on the other side.

Q. Were those two pikemen?

A. I am not positive.

Q. Did the man who wounded you make a thrust at you?

A. They thrust, both of them.

Q. Were there two men thrusting at you or your horse at the same time?

A. There were, just at the same time.

Q. I believe the only wound which you received was in your right hand?

A. It was.

Q. Was your horse wounded by the other man?

A. He was.

Q. Did he receive more than one wound?

A. No; he was wounded in the side.

Q. In the flank or the quarter?

A. Close to the quarter, in the ribs.

Q. The horse died, I believe?

A. He died that night.

Q. Were you attacked by any other persons besides those two, and that musketeer?

A. No, the attack was mutual; I believe we attacked them—and after that I received a wound, and my horse too.

Q. Were any others of your party wounded?

A. Serjeant Saxelby, in two places.

Q. I believe the serjeant is here?

A. He is.

Q. The conflict did not last long after this?

A. No, we were in the middle of them, and they threw away their arms, and some ran away, and others remained.

Q. During the time that the conflict continued, after you got through the wall, do you remember whether any other shots were fired by the persons whom you was skirmishing with, or was it all confined to pike work?

A. Some shots were fired, but I do not know from which party, whether from mine or the other party.

Q. That person whom you have pointed to was taken, was not he?

A. He was.

Q. Had he that gun in his possession?

A. I did not see him taken, for I had passed him; but when I turned round he was standing without arms.

Q. Who had him in charge, do you remember?

A. Not any particular individual—he was in charge of the party that remained, that had not gone after the others.

Q. Did you see him as soon as you saw any person?

A. I did, as soon as I turned round, and looked for the prisoners.

Q. Upon your first arrival?

A. Yes, I did.

Q. Did you see him from that time until the time that

you got through the wall, and snapped your pistol—had you him always in your eye?

A. Yes.

Q. Did he, from his conduct and demeanour, induce you to believe him the leader, or that he was only a follower?

A. I thought him the leader.

Q. From what you observed?

A. Yes.

Q. Can you recollect what position he had when they came down the hill?

A. I cannot speak positively; I think he was in the centre of the party, but I am not positive about it.

Q. Could you ascertain any other persons that were there besides him?

A. Yes, some of them.

Q. Can you remember the name of any of them?

A. I have heard their names since—I have seen them in Edinburgh.

Q. Did you see a person here yesterday?

A Yes, Hardie.

Q Did you see him in the battle?

A. I am not certain whether I saw him before he was taken or not.

Q. You saw him a prisoner?

A. Yes, immediately after he was taken.

Q. I believe you accompanied them the greater portion of the way from Kilsyth to this place?

A. Some part of the way; a little part of the way; the first part.

Q. Did you see Hardie in the first part?

A. Yes I did—he walked some part of the way arm and arm with Baird.

Q. Did they appear to be acquainted?

A. They did, they appeared to me to be great friends.

Q. I believe they were lodged in the Castle?

A. Yes.

Q. Can you ascertain any more of them?

A. Yes, I know some more of them.

Q. Just see if you can point out any more?

A. That is one—Murchie; and Gray, and Harland, Johnstone the boy, I remember their faces now, but whether it is from have seen them in Edinburgh Castle, I do not know.

Q. I only ask you to such individuals as you can remember seeing in the field?

A. I have seen them so often since, it is difficult to say whether I saw them there or in the Court; there are faces there familiar to me now, from having seen them two or three times since, but those men I mentioned I am positive I saw at the time.

Q. Actively employed?

A. Yes, they were employed, and one man I thought was a leader, from being more active than the rest; that was Baird.

Q. How was Baird dressed that morning, do you remember?

A. He was dressed in a brown shooting jacket, a black silk neckcloth, and worsted trowsers and boots; he was rather better drest than the rest of the party, he and Hardie.

Q. The men who were lodged in the Castle here were all taken in that field?

A. Yes, at that time.

Q. Eighteen in number?

A. There were eighteen lodged, and one was left on the field; he was so much wounded he could not be removed at the time.

Q. You say that Cook, one of your men, came to Kilsyth, before you quitted Kilsyth that morning again?

A. Yes, he did.

Q. Did he shew you any paper?

A. Yes he did, he shewed me an Address from the Provisional Government, I think it was signed by ——

Q. Did you keep that Address from that time, or return it?

A. I returned it to him at the moment, and then asked him for it when we had got about a mile from Kilsyth.

Q. That was before you got to Bonnymuir?

A. Yes, I think we had not gone a mile before I asked him for it.

Q. In the way between Kilsyth and Bonnymuir?

A. Yes.

Q. You got it again from Cook?

A. Yes.

Q. How long did you keep it in your possession after that?

A. I kept it in my possession that day, and in the evening gave it to Colonel Taylor, who commanded the regiment.

Q. At this place?

A. At Glasgow.

Q. Did you go the same day to Glasgow?

A. I went the same day to Glasgow, to report it to the Lord Advocate and Colonel Taylor; I went to mention the particulars I had reported it.

Q. That night you handed over the Address which you received from Cook to Colonel Taylor?

A. Yes.

Q. How soon after did you receive it from Colonel Taylor?

A. The next morning; I received it from him in consequence of a communication from the Lord Advocate.

Q. Look if that be the Address which you so received from Colonel Taylor, (*handing a paper to the witness.*)

A. Yes, that is the Address I received from Colonel Taylor.

Q. Did you say that you read the Address that you received of Cook before you gave it to Colonel Taylor?

A. I looked at it when first Cook gave it me, to see what it was, and I had seen a copy of it in Stirling the day before.

Q. What! posted up?

A. It had been posted up, and was taken down.

Q. Can you call to mind whether, after you received it the second time, you read it again?

A. No, I do not think I did, we were going very quick, and I put it into my sabre tache.

Lord Justice Clerk.—After Cook gave it to you on the road, did you read it before you gave it to Colonel Taylor?

A. It is so long since that I cannot charge my memory whether I read it then; but at the time I gave it to Colonel Taylor I looked at it, and read part of it with him, I remember that; I am quite certain that the paper I received from Cook I delivered to Colonel Taylor.

Q. And you believe that the paper you received from Colonel Taylor was the paper you gave him the night before?

A. I have every reason to suppose it.

Q. Do you believe then that that is the paper that you received from Cook under these circumstances?

A. Yes, I am almost convinced of it, but I cannot swear to it.

Q. The reason you cannot swear to it correctly is ——

A. From its being out of my hands for a few hours—I am certain that was the nature of the Address; that the words were the same nearly; it was the sort of Address.

Q. Did you make any observation as to any thing upon the Address when you got it from Cook?

A. I saw the signature and the beginning of it; I did not read it through.

Q. And, when you delivered it to Colonel Taylor, it was read by him and you together, probably?

A. Yes, I am positive some of it; I think the whole of it.

Q. What was your reason for giving it to Colonel Taylor?

A. He wished a copy.

Q. Was this the same night that you got to Glasgow?

A. Yes, it was the night. I am not certain whether it was in the morning early or that night.

Q. It would be morning before you got there?

A. No; I saw him for two or three hours that night; and we were up late; and whether I gave it him that night or the next morning early, I am not certain. I think he had it in the night; I am not certain.

Q. You accompanied the prisoners taken at Bonnymuir part of the way, and you then stopped at some bridge to write letters?

A. I accompanied them half a mile to an inn, to write dispatches, and I overtook them again before they got to Stirling.

Q. Were the arms that were taken all lodged in the Castle at the same time with the prisoners?

A. Yes, they were.

Q. Do you remember the number of pikes?

A. There were sixteen pikes, a pitchfork, and a pike-handle without a head, five muskets, and two pistols.

Q. Do you happen to know of your own knowledge whether any ammunition was taken in the field?

A. I did not see it taken from the prisoners. I saw a bag of ammunition there that they told me was taken.

Q. Serjeant-major Warren took that?

A. Serjeant-major Warren told me, I think, that he had searched the prisoners when I came up.

Q. You did not see any of their persons searched?

A. No, not any.

Cross-examined by Mr Jeffrey.

Q. How many men went with you in your party?

A. Sixteen of my own regiment, and, I think, the same number of the Yeomanry; I am not certain.

Q. All fully armed, of course?

A. Not fully armed, we had not our carabines; being mounted on the Yeomanry horses, we had only their arms.

Q. Pistols?

A. Yes, and swords.

Q. I think you say, that, from the observation you had, the party on the hill amounted to twenty or twenty-four?

A. About twenty.

Q. You got eighteen prisoners?

A. Nineteen, and one escaped.

Q. You do not know whether any of them escaped?

A. I do not know. The greater part of what I saw we took.

Q. Of those who came down the hill?

A. Yes.

Q. You went with a view of taking them, I suppose?

A. Oh, yes.

Q. You have mentioned, I think, that you called repeatedly, when you came nigh, for them to surrender, and lay down their arms?

A. Yes.

Q. Did they make any answer?

A. I think the word "treat" was used, and two or three other words—"we will treat with you," or, "will you treat with us?" or something of that kind.

Q. Do you know who used those words?

A. No, I do not.

Q. Was it Baird who used those words?

A. I should say not—positively—it was some other man of the party. I am positive it was not Baird that spoke those words.

Q. Baird, you think, levelled his piece at you from the first time he observed you, and continued to keep you in his eye?

A. Yes.

Q. That was when the wall was between you?

A. Yes.

Q. Did he continue in the same attitude after you got through the gap?

A. Yes, till I presented a pistol.

Q. Did you hear him say any thing at all during that time?

A. No.

Q. No words passed between you and Baird at

A. No, I do not think there did.

Q. Did you observe how Baird gave in at last?

A. No, I did not; he had surrendered when I turned round, and he was standing without any arms in his hand.

Q. A very short time elapsed after you got through the wall till it was all over?

A. A very short time; I do not know how many minutes, but not many.

Q. There were some shots fired before you fired?

A. Yes.

Q. Were those shots fired before you called to the enemy, as we must call them?

A. Yes, they were.

Q. Was there any firing after you called to them to lay down their arms?

A. There was no firing till the skirmish, when we came to close quarters, and then there was some firing from the one party or the other; I cannot tell which.

Re-examined by Mr Serjeant Hullock.

Q. You have been asked if you were fully armed when you set off?

A. Yes.

Q. You were not so?

A. We were not as we are with our own horses; there is a great difference between our horses and the Yeomanry horses.

Q. If a man has been in the army for four or five years, he can distinguish between the Hussars and the Kilsyth Yeomanry?

A. Certainly.

Q. And probably a man with a military eye could distinguish a troop armed with carbines from a troop without carbines.

A. I should think so, when they were near him—as soon as he could see them distinctly.

Q. Are your regiment well dressed when they are mounted?

A. Yes.

Q. You look grander than the Kilsyth troop?

A. There is a great difference in the appointment and arms; we have white sheepskins, and they have no sheepskins at all; and there are a great many distinctions.

Q. Are the distinctions so great as to enable persons, at the distance you first saw those persons at, to distinguish whether it was part of the troop of the Hussars, or part of the Kilsyth Cavalry?

A. I cannot answer that question. I could have told myself. We had some of our own horse with us.

Mr Jeffrey.—How many of your party had their own horses?

A. I think, five or six.

Mr Serjeant Hullock.—I do not object; but you have no right to put the question.

Lord Justice Clerk.—I will put any question you wish, Mr Jeffrey.—Prisoner, have you any question you wish to suggest?

Prisoner.—No, my Lord.

A Juryman.—How many yards distant might you be when the cheering took place?

A. It was when first we saw them; we were nearly a quarter of a mile off.

Q. Who cheered first?

A. They all cheered together; there was no cheering except from their party.

Q. There was no cheering on the part of the Yeomanry?

A. No, not at all; there was only cheering from their party, that were at a distance of nearly a quarter of a mile when we first saw them.

Q. And that cheering was entirely on the part of the prisoners?

A. Entirely on the part of the prisoners.

Mr John James Davidson—*sworn.*

Examined by Mr Drummond.

Q. Do you remember going out with Lieutenant Hodgson and a party of cavalry, in the beginning of April last, in search of a party of people?

A. Yes.

Q. What day in April?

A. The fifth of April.

Q. About what time?

A. About half past eight.

Q. Where did you go?

A. We went along the road till we came to Bonnymuir.

Q. How far is Bonnymuir from Falkirk?

A. About four miles.

Q. You went off the road there?

A. Yes.

Q. You got information on the road of the way the people went?

A. Yes.

Q. You went off the road at Bonnybridge?

A. Yes.

Q. Where did you see the people first?

A. About half a mile off, (on a height,) or rather more

Q. How far were they from you when you saw them first?

A. About half a mile, straight road.

Q. You advanced?

A. Yes.

Q. Did they begin to move then?

A. When we got pretty near them, they came down from the height, and took a place behind a stone-wall.

Q. How far were you from them when they began to move?

A. About a quarter of a mile, I should think.

Q. Did you see what they did at the time they began to move?

A. Some of them took off their hats, and appeared to be cheering; they waved them in the air round their heads.

Q. Did they cheer?

A I heard a sort of sound; I could not say what it was.

Q. Then they came down?

A. They came down, and took a place behind this stone-wall.

Q. Did they remain at the wall till your party came near them?

A. Yes.

Q. What did they do then?

A. When we had got about seventy yards, they fired a couple of shots.

Q. Over the wall?

A. Over the wall.

Q. There was no firing from your party before this?

A. No, none.

Q. They fired about a couple of shots over the wall—what did your party do then?

A. We road in a gallop, as fast as possible, close to the wall, and then we got through a gap in the wall; and at that time Mr Hodgson desired them to lay down their arms.

Q. Did they lay down their arms?

A. They did not; they refused to do so.

Q. Did they attempt to prevent Mr Hodgson and the party from coming through the gap in the wall?

A. They did.

Q. In what manner?

A. With their pikes. About eight of them, I think, formed at the gap, and attempted to prevent our getting through with their pikes.

Q. How did they present their pikes?

A. Some of them were upon their knees presenting them.

Q. Did they receive the cavalry, at the time they were attempting to get through the gap, in the way infantry receive cavalry?

A. Some of them did—those that appeared to be trained to that.

Q. Each man was kneeling upon one knee, I suppose?

A. One knee.

Q. Did you pass through the gap?

A. Yes, I did.

Q. Did any of the party appear to you at the time to be the leader of the rest?

A. Yes.

Q. Can you point him out there?

A. Yes; John Baird appeared to be the leader.

Q. Is that the man, (*pointing at Baird.*)

A. Yes.

Q. He appeared to you, from his conduct at the time, to be the leader of the party?

A. Yes.

Q. What did he do at that time particularly?

A. He was at the head of the party, with a blunderbuss or short gun in his hand, and at that time he was presenting it at Mr Hodgson—levelling it.

Q. At what particular time?

A. That was after we got through the gap.

Q. Immediately after you got through the gap—you observed him immediately after you got through the gap levelling this short gun at Mr Hodgson?

A. Yes.

Q. Did he merely take it up once and present it at him, or continue to do so?

A. He continued to do so for some minutes, I think.

Q. Had Mr Hodgson a pistol in his hand at any part of that time?

A. Yes, he had a pistol he drew from his holster.

Q. What did he do with it?

A. He presented it at Baird; it flashed or snapped, I do not know which—it did not go off.

Q. After your party got through the wall, what happened then?

A. We made a kind of charge at them, and they gave way.

Q. Can you point out any of the rest there, that were there at that time?

A. Murchie.

Q. Point out the individual?

(*The witness pointed him out.*)

Q. Which other?

A. M'Culloch—that boy that is standing up there, (*Johnstone.*)

Q. What did you observe the boy doing particularly?

A. I did not see him until after; when I saw him first he was lying down among the heather.

Q. This was after the business was over?

A. Yes.

Q. Did he pretend to be wounded?

A. He pretended to be dead or asleep, I did not know which.

Q. What did you say to him?

A. I told him to get up, and he did so.

Q. Do you remember a person of the name of Hardie there?

A. Yes.

Q. Did you see him on the way afterwards—after the fight was over, in the way to Stirling?

A. I do not remember; I remember him perfectly there.

Q. He was one of those that were taken prisoners?

A. Yes.

Q. All those that were taken prisoners were brought to Stirling?

A. Yes.

Q. You came along with them?

A. Yes.

Lord Justice Clerk.—There was one wounded man left on the field?

A. There was.

Mr Drummond.—Did any escape?

A. A good number escaped.

Q. What arms were taken?

A. There was a number of pikes, and some muskets and pistols, and a pitchfork.

Q. Any ammunition?

A. Yes, there was some ammunition in a bag—in a whitish coloured bag.

Q. What sort was it—ball-cartridge?

A. Ball-cartridge, and some powder also.

Q. Did you see some of the prisoners searched?

A. Yes.

Q. What was found?

A. Ball-cartridges in their waistcoat pockets.

Q. The persons of how many did you see searched?

A. Two or three, I think; not more.

Q. And they had all ball-cartridges?

A. Those that I saw searched had.

Q. How many each?

A. Some of them had three or four.

Q. Ball-cartridges?

A. Ball-cartridges.

Q. That ammunition and the arms you have spoken of, were taken to the Castle and lodged there?

A. Yes.

Q. Would you know any of them again?

A. I think I would know some of them.

Q. Come over here and look at them.

(*The witness examined the arms.*)

A. I know these two pikes.

Q. Do you know that those were two of the pikes taken at Bonnymuir, and brought to Stirling Castle?

A. I know that, and I saw one of this shape, (*another pike.*) This is the bag.

Lord Justice Clerk.—That is the bag that was taken at Bonnymuir?

A. Yes.

Mr Drummond.—Is that your name upon the label?

A. Yes, it is.

Q. Do you know that to be the same?

A. Yes.

Q. Open it, and see what it contains?

A. This is powder, and these are the balls. (*Producing them.*)

Q. Do you know any of the guns again?

A. This one I know, (*producing it.*)

Q. How do you know it—from its general appearance?

A. Yes, from the appearance of it.

Q. Do you remember where you saw that particularly?

A. I saw it in the hand of John Baird.

Q. Is that the one that he presented at Mr Hodgson?

A. The one.

Q. Look at the lock if you please?

A. That is the gun.

Lord Justice Clerk.—Has the prisoner any question he wishes to put?

Prisoner.—No.

ROBERT BOWLER, private in the 10th Royal Hussars—*sworn.*

Examined by Mr Hope.

Q. You are in the 10th Hussars?

A. Yes.

Q. You belonged to that regiment in the beginning of April last?

A. Yes.

Q. In the King's employ of course—receiving the King's pay?

A. Yes.

Q. Were you at Kilsyth, with a part of that regiment, in the first week of April?

A. Yes.

Q. Do you remember upon what morning you went there?

A. I do not recollect the day of the month?

Q. Did you leave Kilsyth along with the party under the command of Lieut. Hodgson, to go in quest of some people that had been seen in the country?

A. Yes.

Q. You went to a place called Bonnymuir, some distance off?

A. Yes.

Q. Did you see any party of men when you arrived there?

A. Yes.

Q. How far were you off when you first saw them?

A. A long distance; I cannot exactly say.

Q. You went up towards them?

A. Yes.

Q. State to us what took place. Did they observe you?

A. Yes, and they ran down towards the wall, and advanced to us. When we came within the space of fifteen or twenty yards, they fired at us?

Lord Justice Clerk.—At your party?

A. Yes.

Mr Hope.—You continued to advance?

A. Yes.

Q. Did you hear Lieut. Hodgson say any thing to them, and what?

A. He went up to them and told them to lay down their arms, and they would not do it.

Q. Did you advance nearer to them than that distance at which you say they fired at you?

A. Yes, we went close to the wall.

Q. At the time you advanced close to the wall, did any particular person attract your attention?

A. The one which Mr Hodgson spoke to.

Q. How many might there be upon the whole down at the wall?

A. I should think there were about thirty, or nearly thirty.

Q. Will you look at the bar, and see whether you see the man there to whom Lieut. Hodgson's address appeared to be made?

A. I suppose he addressed it to Baird.

Q. Is that the man now standing up?

A. Yes.

Q. What followed after this observation?

A. Baird levelled his piece at Mr Hodgson, and it did not go off.

Q. Had you observed whether or not his piece was levelled at the officer before he desired them to lay down their arms, or whether it was levelled at him afterwards?

A. Afterwards.

Q. Did your attention continue to be directed towards that man?

A. At that present time it was.

Q. That was before you got through the wall?

A. Yes, that was before we got through the wall.

Q. What followed after this?

A. Some of our men fired at the gap, and with that some of our men got in.

Q. Had any of the party been from the first stationed at that gap, or did they go towards the gap when Lieutenant Hodgson, or some of your party, attempted to get through?

A. When we got up to the gap, some of them were there at the time, but they advanced from the hill with the others, I believe.

Q. And then, you say, that after the firing at that gap the cavalry got through?

A. Yes.

Q. Was your attention directed to any particular person after you got through the gap?

A. One lad.

Q Do you see him here?

A. Yes, that is the lad, (*Johnstone.*)

Q. Did you observe the same person after you got through the gap, who had been previously aiming at Lieutenant Hodgson?

A. No, I did not observe him afterwards.

Q. When you observed him previously when he had levelled his musket at Lieutenant Hodgson, and when you say it did not go off, what did he do then?

A. He went up to the wall with it afterwards, and whether he knocked the cock off it afterwards I cannot say; but he struck one of the Hussars on the thigh with it afterwards.

Q. Did he appear to be knocking his musket against the wall?

A. Yes.

Q. But you cannot say whether he knocked the cock off or not.

A. No.

Q. What did he do with the musket afterwards?

A. He struck one of our regiment on the thigh with the butt of the musket.

Q. Was that before any of you got through the gap?

A. No; after we got through the gap, directly as we got through the gap, I was not through myself at the time, but I saw it done.

Q. Was Baird near the gap at that time when he struck the soldier?

A. Yes.

Q. Did you observe whether at the time that the musket was presented at Lieutenant Hodgson, Baird drew the trigger?

A. No, I did not observe that.

Q. Was it immediately after the musket was presented that he went towards the wall to knock it in the way you have described?

A. Yes, soon after, in a minute or so.

Q. In what way did he knock it?

A. He got hold of it by the barrel, and was knocking it on the wall in this way. (*describing it*).

Q. Knocking the stock of it?

A. No. The catch of it.

Q. Was that the attitude of a person who appeared to be sharpening the flint?

A. No. I do not think it was any thing of that kind; I cannot say.

Q. For what purpose did he appear to be doing it?

A. To knock the cock off, so that it might not be of any more use, I thought.

Q. You said some men were standing at the gap opposing the cavalry at the time your party fired on them and got through, how were they opposing them?

A. There were two on each side with pikes, one higher than the other.

Q. What do you mean by that?

A. In this direction, one above another. (*Describing it.*)

Q One man kneeling?

A. No. They were both standing behind the wall.

Q. And one man was higher than the other?

A. Yes, across in this way, so as to keep us out.

Q. Were there more men about the gap than the four, two of whom were upon each side?

A I did not see any more.

Lord Justice Clerk.—Were the pikes slanted towards the opening or across the opening?

A. Across the opening.

Q. So that they might take any body in the side as they passed, or any horse?

A. Yes.

Mr Hope.—At the time that some of your party fired at the gap, was it to enable them to get through, and to clear away the obstruction of those persons?

A. Yes, it was.

Q. Do you know, or does your observation enable you to state, whether the whole firing on your side was directed towards that gap, before you got through?

A. No.

Q. It was not?

A. I do not know whether it was or not.

Q. Did you observe any other shots fired than in that direction?

A. There were more fired towards the wall, I believe from our men, and likewise from them.

Q. Were any shots fired by either side, and by which, if any, after you got through the gap?

A. There was a lad that fired several times, I cannot say that I saw whether any body else did or not.

Q. After you got through the gap?

A. Yes.

Q. Do you observe the lad at the bar?

A. Yes.

Q. Which?

A. Johnstone.

Q. Did he re-load?

A. Yes, he fired several times before any of the men got up to him.

Q. What was it, a musket?

A. A pistol.

Q. Look at the men at the bar, and ascertain whether you observed any other of them there upon that occasion?

A. I recollect seeing them on the road coming out of the field; but I did not see any of them in the field with arms.

Q. Did you see any without arms?

A. Yes, I saw the whole of them without arms.

Q. How were they disarmed? did you observe whether they were disarmed as they surrendered, or whether they threw them way?

A. The chief part of them threw them away; what I saw threw them away; they took them as far as they could, and when they found they were near being overtook, they threw them down.

Lord Justice Clerk.—Then they were taken prisoners?

A. Yes.

Mr Hope.—Did you observe any of them searched?

A. No; I was round the field when they were searched.

Q. Did you see any bag during the skirmish?

A. No; I saw it after the skirmish was over, but I did not see it on any of the prisoners.

Q. Did you observe a person, whose name you afterwards ascertained to be Hardie, there?

A. No; I do not recollect him.

A Juryman.—Should you know him if you were to see him?

A. I might; I do not know his name.

Lord Justice Clerk.—Prisoner, have you any questions to put to this witness?

Prisoner.—No. my Lord.

WILLIAM SAXELBY—*sworn.*

Examined by Mr Serjeant Hullock.

Q. Are you a Serjeant in the 10th Hussars?

A. Yes.

Q. That is the King's Own regiment?

A. Yes.

Q. Were you at Bonnymuir on the 5th of April?

A. Yes.

Q. Had you marched from Stirling that morning?

A. Yes.

Q. And you accompanied that portion of your troop that went from Kilsyth to Bonnymuir, did you?

A. Yes.

Q. Were you upon your own horse, a troop horse, or upon a cavalry horse?

A. My own horse.

Q. Do you remember, when you came near the spot upon which afterwards the skirmish took place, seeing the people upon the muir at a distance?

A. Yes.

Q. How far off might they be when you first observed them?

A. About a mile.

Q. What were they doing when you first saw them, as far as you remember? were they standing, sitting, or walking, or doing what?

A. Some might be sitting; it was so far distant, I could not possibly say.

Q. Could you distinguish whether they were in motion or stationary?

A. They were in motion.

Q. What way were they going, and at what pace, when you first saw them in motion?

A. Part of them were standing.

Q. Did they remove to a greater distance from you, or did they advance nearer towards you?

A For some minutes they kept their ground, and afterwards advanced.

Q. That is, towards you?

A. Towards me.

Q. In what way did they advance towards you? at what pace?

A. They ran.

Q. Did they come close up to you, or did they stop at any place before they came close to you?

A. They ran within some yards of the wall, and then they gave three cheers.

Q. Did they come over the wall, or did they continue alongside the wall?

A. Alongst the wall.

Q. Did you see in what manner they ranged themselves alongst the wall?

A. Alongst the wall as far as they could extend, not close.

Q. What do you mean? in line?

A. Yes.

Q. Of what extent might that be?

A. A hundred yards.

Q. Behind the wall you mean?

A. Yes.

Q. Do you mean, that the wall was a hundred yards long, or that that was their line?

A. The wall was a great distance, and they might be spread alongst the wall a hundred yards or near about it.

Q. Did they outflank you in that way?

A. Yes, we could only come by file.

Q. From the nature of the ground?

A. Yes.

Q. Did any thing take place, before your party had reached the wall?

A. About thirty yards they fired.

Q. When you had reached within thirty yards of the wall they fired?

A. Yes.

Q. Can you say what number of shots were fired?

A. They fired two or three at a time.

Q. A straggling sort of firing?

A. Yes.

Q. Can you tell whereabouts the number of shots fired in the whole might be?

A. Eight shots might be fired, and then we rode close to the wall.

Q. Had any firing taken place on your part before those eight shots had taken place?

A. None.

Q. What sort of front did your party exhibit in going down to the wall, do you remember?

A. We shewed no front; we were in file till we came to the wall; we might extend ten or twelve yards alongst the wall, but no proper front was shewn.

Q. Your officer was at your head?

A. Yes, my officer and myself.

Q. You were near your officer?

A. Yes.

Q. Did you hear your officer address any thing to the persons behind the wall?

A. He ordered them first to lay down their arms.

Q. Did he repeat that order?

A. Yes; I repeated the order likewise.

Q. Were you and he near enough, at the time that you gave those orders, to be heard by the party?

A. Yes.

Q. By the whole party, or by only some of them?

A. The whole of them.

Lord Justice Clerk.—The whole party behind the wall, you mean?

A. Yes.

Mr Serjeant Hullock.—You say, shots, you think, to the number of eight, were fired at your party—do you know by what sort of instruments, by muskets or pistols?

A. By fowling-pieces, muskets, and pistols.

Q. Were they all armed with muskets, and that description of weapon, or what?

A. Some had muskets and pikes too.

Q. Were you, at the time your officer and you went down,

and so addressed them in the way that you have mentioned, within the reach of their fire?

A. Yes.

Q. You were within range of musket shot, were you?

A. Yes.

Q. Were you wounded in the action?

A. Yes.

Q. When were you wounded? before you got through, or after you got through the wall?

A. Afterwards.

Q. Whence did your wound arise? a musket-ball or shot, or those instruments?

A. A pike.

Q. Did you receive more than one wound?

A. Two.

Q. In what part?

A. One in the arm, and a shot in the body.

Q. Then you received a pike wound, and a shot wound?

A. Yes, a gun or pistol; it was a slug.

Q. You received the slug in your side?

A. Yes.

Q. The officer got through a gap in the wall?

A. Yes.

Q. And you went through the gap?

A. Yes.

Q. Did you go along with your officer, or immediately follow him?

A. I followed him.

Q. He went first, and you next?

A. Yes.

Q. Upon your approaching the gap in the wall, what species of resistance was offered by the persons on the other side, either by the presentment of pikes, the crossing of pikes, or the presentment of arms in any other way?

A. The presentment of pikes, and muskets covering them.

Q. Describe to us what you mean by the presentment of pikes, and muskets covering them?

A. The pikes were set in the position, and three men kneeling down.

Q. Were those men kneeling down, with those pikes in that position, immediately opposite the gap?

A. In the gap.

Q. Was it practicable for you to get through that gap, without killing the men before you?

A. No.

Q. You say that those three men were in that position; state the position the covering musketeers were in?

A. Standing, presenting to fire if any one attempted to go on.

Q. Standing behind those other men?

A. Yes.

Q. Presenting their arms to fire?

A. They were on the level for firing.

Q. Can you take upon you to say, whether or not any of those muskets were fired, when you made the attack upon the gap?

A. None.

Q. Did you receive either of your wounds in the attack upon that place?

A. Yes, the wound in my arm.

Q. Did that wound arise from one of those pikemen?

A. Yes.

Q. Did the pikeman by whom you were wounded, make a thrust at you, or was it by your making a charge at him?

A. Making a thrust.

Q. In what way did he thrust at you? did he thrust at you with a view to hurt you, do you suppose?

A. He gave point; when I went to defend myself he attempted to dismount me from my horse.

Q. Was it a slight or severe wound?

A. It was not through, but you could observe it on the other side of my arm.

Q. Was it done with force?

A. By force.

Q. I need not ask you if that wound had taken effect in your body, whether you would have been here or not today;—when did you receive your second wound?

A. I cannot say.

Q. But you received it after the other wound?

A. After.

Q. Was it in your sword arm that wound?

A. Yes.

Q. The pike wound was in your sword arm?

A. Yes.

Q. What became of you upon receiving that wound?

A. I stood during the time as long as the rest of my comrades.

Q. But when you received the other, or from whom, you cannot tell?

A. I cannot say.

Q. Do you remember the man from whom you received the pike wound, do you think?

A. Yes.

Q. Have you seen him since?

A. Yes.

Q. Do you know his name?

A. Not his Christian name.

Q. What is his sirname?

A. Baird, (*Pointing him out.*)

Q. That is the person from whom you received your pike wound?

A. Yes.

Q. He was one of the three, then, that defended the entrance into their part of the field?

A. Yes.

Q. Had you seen him before that part of the proceeding?

A. Yes, when my officer entered through the gap, he presented a piece close to his side.

Q. The same man, therefore, that wounded you with a pike, had before that time, presented a piece at your officer?

A. Yes, and finding it did not do execution or go off, he threw it down and took a pike in his hand.

Q Where did he get his pike from?

A. Lying upon the ground.

Q. Are you quite sure that you saw him level a piece at your officer, and after that throw it down, and take up a pike and act in the way you describe, with respect to yourself?

A. Yes.

Q. Had you seen Baird, before you saw him level the piece at your officer's side?

A. Not to my knowledge.

Q. Did your officer, and you and the party, get through the obstruction which existed at the gap, notwithstanding those pikemen?

A. Yes.

Q. Was Baird taken afterwards?

A. He fell down as I entered the gap, and I did not see any more of him, till I came and saw he was a prisoner.

Q. You are quite sure, he was the man that wounded you, and the man that also levelled a piece at your officer, you say?

A. Yes.

Q. Do you remember any other man's face, and the names of any other persons that you saw there?

A. No.

Q. Should you know any of them again if you saw them, think you?

A. Yes, by seeing them coming along the road as prisoners.

Q. Were all those men who came along the road as prisoners, taken at that time?

A. Yes.

Q. Look at those men?

A. There are more than the number that I saw.

Q. But which of those do you recollect to have seen at that time? Point out any other persons whom you saw before you got to the gap, or afterwards in the course of that skirmish, who were taken prisoners.

A. This man fourth from the right.

Q. Do you mean near the boy?

A. Yes.

Q. What coloured handkerchief has he?

A. Black, (*Moir.*)

Q. You remember him there?

A. Yes.

Q. Any other persons can you speak to?

A. Not to be confident.

Lord Justice Clerk.—I understood him to say all the men he saw prisoners, were taken at the time.

Mr Serjeant Hullock.—Yes, my Lord. All the men you saw taken to Stirling as prisoners, were taken at the time?

A. Yes, they were taken prisoners when I left the place; I took none.

Q. You were disabled by your wound?

A. Yes.

Q. You were not there when any search was made for ammunition?

A. No.

Q. Did you leave the field, or only go aside?

A. I only went aside.

Q. To get your arm bound up?

A. No, after I found myself getting weak, I rode away by myself.

Q. You grew faint, perhaps, from the loss of blood?

A. I was.

Cross-examined by Mr Jeffrey.

Q. I think you said the man who struck you with a pike was in the gap?

A. Yes, at the entrance of the gap.

Q. Was it before you got into the gap that you were hurt?

A. No, as I was going through.

Q. Had Lieutenant Hodgson got in by this time?

A. Yes.

Q. Had he passed the same man?

A. I cannot say.

Q. Were not you close behind him?

A. He might be one minute before me.

Q. Then you were not close covering him?

A. I was the first one that followed him.

Q. But not close up with him?

A. No.

Q. Where was Lieutenant Hodgson when this man

Baird levelled his piece at him? was he inside of the gap then?

A. He was exactly through.

Q. And you were outside?

A. Yes.

Re-examined by Mr Serjeant Hullock.

Q. You have been asked how near you were to your officer when you went through the gap, now I do not ask you that,—your officer was the first through the gap?

A. Yes.

Q. Did the levelling of the piece by that man take place as soon as your officer had penetrated through the gap?

A. Yes.

Q. You say it failed, it would not go off?

A. Yes.

Q. Did he throw it down and take up a pike before you got through?

A. Yes.

Q. He received your officer by levelling of his musket?

A. Yes.

Q. When you got through you were received by a pike?

A. Yes.

Q. By the same man?

A. Yes.

Q. Whatever time might elapse between your officer getting through and your getting through, he had an opportunity of changing his weapon?

A. Yes.

Q. And he did do that?

A. Yes.

Q. With respect to your officer, the piece, whatever it was, a musket or fowling-piece, proved harmless?

A. Yes.

Q. With respect to yourself, you have stated the consequences of the pike?

A. Yes.

Lord Justice Clerk.—You say the gun failed in its effect and did not go off, were you near enough to observe whether the trigger of that musket in Baird's hand was drawn?

A. Yes.

Q. You saw the trigger drawn?

A. Yes.

Q. When levelled at your officer?

A. Yes.

JOSEPH WARREN—*sworn.*

Examined by Mr Drummond.

Q. You are a Serjeant-major of the 10th Hussars?

A. Yes.

Q. Were you at Bonnymuir on the 5th of April?

A. Yes.

Q. Had you gone from Stirling that day?

A. The night before.

Q. You did not march with the troop then, did you?

A. Yes, in the morning.

Q. Were you upon your own horse in that adventure?

A. Upon my own.

Q. Where were you at the time that your party led down towards the wall?

A. On the left.

Q. Was your officer between you and Saxelby?

A. He was.

Q. Was the only front that you shewed, the front shewn by you there?

A. No, in going down we could only go by files.

Q. From the difficulty of the road?

A. In consequence of the road being so narrow.

Q. Do you remember a gap in the wall?

A. Yes.

Q. Did you pass through that gap yourself?

A. I did.

Q. Before that, where were the persons on the other side, how were they arranged on the other side?

A. There were four at the gap to prevent our going through, the others were against the wall.

Q. How were those four at the gap armed,—were they armed some way and some another, or all uniformly armed?

A. I did not take particular notice whether they had more than pikes, but each had pikes.

Q. Were the pikes placed in any order, so as to obstruct you?

A. They were placed so as to obstruct our coming through that wall.

Q. Were they placed so as to produce that effect, if you had not been determined to go?

A. If we had not been determined, they might have prevented us.

Q. Upon going through that place, did you observe any person in particular?

A. None in particular.

Q. How near were you to your officer at the time that you went through the gap?

A. He was in advance of me some distance.

Q. Did you see him go through the gap?

A. I did.

Q. Did you see any of the men on the other side near him, either with pikes or muskets, or any other weapon?

A. I saw him engaged with three or four.

Q. In what way were these persons armed, do you remember?

A. Pikes generally.

Q. Did you observe any of them with a short musket or fowling-piece?

A. I observed one man with a short blunderbuss.

Q. Had you observed that man before or after, or was that the first time of your observing him?

A. That was the first time I observed his having that.

Q. Had you seen the man before?

A. I had not.

Q. Should you know him again?

A. Yes.

Q. Look about?

A. There he is.

Q. Is that the man in the middle? (*Baird.*)

A. That is the man.

Q. What did he do with that blunderbuss?

A. He attempted to fire at the Lieutenant.

Q. Did you see him make the attempt?

A. I did.

Q. By the attempt, do you mean drawing the trigger?

A. He made an attempt, but the piece did not go off.

Q. How near was he when he made that attempt?

A. By the distance I was off at that time, I suppose he could not be more than five yards off.

Q. You mean that the Lieutenant was not more than five yards off the man?

A. Yes.

Q. Did he level it as a man does when he is going to shoot at any thing?

A. He took his aim.

Q. I need not ask whether he was within distance?

A. I have named the distance.

Q. Five yards?

A. I conceive about five yards.

Q. Did you see the trigger drawn?

A. I did not.

Q. How long did he keep it presented at your officer? or what became of him afterwards?

A. My attention was called to a different part of the field.

Q. You, I believe, afterwards got through the gap—did you not?

A. Yes.

Q. In what way were you received? had the gap been cleared?

A. The four men that were at the gap had been cleared away. I had been giving some directions to the men, and I was prevented going through by a Yeomanry horse that

stopped in the gap—whether the horse was bogged, or would not go through, I do not know.

Q. That retarded your going through?

A. Yes.

Q. Did you encounter any opposition?

A. I did, with one or two.

Q. In what way did they receive you?

A. They were, apparently to me, defending themselves against some of the men.

Q. Against some of your men?

A. Yes; I rode up to them; they were engaged (some of the men) with the Hussars. I rode up to them, and ordered them to desist, which one of them did immediately; he threw down his pike, and I took him prisoner; and after that, more men were brought in to me.

Q. After that, your attention was directed to taking care of the prisoners?

A. Yes, and receiving their arms.

Q. Were the arms brought in to you?

A. The arms were not brought in till the whole of the prisoners were collected.

Q. Were they afterwards?

A. They were collected, and all brought in to where the prisoners were.

Q. Where you were?

A. Where I was.

Q. State to us the number of arms, and the sort of arms, brought in to you on that occasion?

A. To the best of my recollection, I think there were sixteen pikes complete.

Q. With heads upon them?

A. Yes, the same as that, (*pointing to a pike;*) one pike-shaft and a hay-fork. I believe there were five fowling-pieces and seven pistols.

Q. With respect to ammunition, was there any thing of that kind?

A. There were a few rounds of ball-cartridge collected from them.

Q. From the persons then in custody?

A. Yes.

Q. How many might they have a-piece?

A. I cannot say what each might have had, it was collected so quick and put into a haversack. There were also three parcels of loose powder, which I gave to Mr John Davidson of the Cavalry to bring here.

Q. Then the ball-cartridges, and the powder that you gave in that bag to Mr Davidson, were collected on the field?

A. Yes.

Q. Do you know where the bag came from?

A. The haversack was worn by Baird.

Q. Did you see him have it on?

A. I saw it taken off him; I did not take it off myself.

Q. Do you know whether, at the time it was taken from Baird, it contained any thing or not?

A. It contained nothing.

Q. It was quite empty, you mean?

A. Quite empty.

Q. In going towards this place, at what distance were the individuals whom you afterwards came in contact with off, when you first remember to have seen them?

A. I should conceive, when we got upon the muir, that the distance might be a mile before we saw them.

Q. Do you remember what they were doing?

A. When I first saw them they were lying or sitting down upon the top of a hill; some lying, apparently, and some sitting upon the hill.

Q. By the side of the hill?

A. On the side of the hill.

Q. Could you form any opinion about the number?

A. At that distance, it appeared to me about forty persons.

Q. Did they continue in that position lying and sitting down for some time, or what did they do?

A. When we were about half way across the muir, they came down the hill, and formed themselves on the other side of the dike or wall.

Q. At what pace did they come down the hill—did they walk or run?

A. They came gradually down.

Q. Did they do any thing in coming down that you saw?

A. No; I observed nothing but their coming regularly down the hill.

Q. Did they come in any order?

A. They did not appear to come in any regular array; they rose up and came down gradually.

Q. Did you observe the manner in which they were equipped at that time?

A. At that distance we could see that they had pikes.

Q. Was that from the glittering of the heads, or from the poles?

A. From their carrying them.

Q. Were they pikes of this sort, with polished handles?

A. No, I believe you will not find two of them alike.

Q. They did not appear to have come from the same manufacture?

A. It does not appear as though they were manufactured by one person.

Lord Justice Clerk.—Prisoner, have you any questions?

Prisoner.—No.

ROBERT BOWLER called again.

Examined by Mr Serjeant Hullock.

Q. You have been at the Castle, have you?

A. Yes.

Q. Did you see the prisoner Hardie there?

A. Yes.

Q. Did you see him at this battle?

A. I saw him there, but not armed.

Q. At what period?

A. Just as we were coming out of the field.

Q. He was one of those who were taken prisoners?

A. Yes.

Q. And do you not remember to have seen him at any former period of that day?

A. No

JOHN DAVIDSON—*sworn.*

Examined by Mr Drummond.

Q. You are a private in the Kilsyth troop of Stirlingshire Yeomanry?

A. Yes.

Q. Were you on duty with your troop on the 5th of April last?

A. Yes.

Q. Did you go out with a party in consequence of information that was got respecting a party that morning?

A. Yes, about nine o'clock.

Q. Towards Falkirk?

A. Yes.

Q. You went off the road at Bonnybridge?

A. Yes.

Q. Whom did you see after leaving the road?

A. After passing the canal, and proceeding along a wood on the edge of the muir, we saw a party of people conveying pikes on a height to our left.

Q. What did they do on seeing your party?

A. They ran down the hill and got to a wall.

Q. Did they fire over that wall?

A. Yes.

Q. Before you got round?

A. No, we had to go round some distance.

Q. They fired over the wall before you went through it?

A. Yes.

Q. Are you certain they fired first?

A. Quite certain; there was first one shot, and then several more.

Q. All from them?

A. All from them before any were fired on our side; we were thirty or forty yards distant at the time.

Q. Was there a slap in the wall?

A. There was a small opening between the wall and the corner of the wood on the right.

Q. Did any of your party go through that?

A. Yes, Lieutenant Hodgson past through first, and then several of the Hussars and Yeomanry.

Q. Did you see any resistance offered to their going through?

A. There were several people standing in the slap with pikes.

Q. Did you pass through yourself soon after?

A. Yes, but there were more than half the party through before I got past; I was to the right of our party.

Q. There was an attack made upon them when you got through the wall, I suppose?

A. They fired over the wall previous to our getting through.

Q. After you got through, and the skirmish was over, what was done?

A. The prisoners were brought in, and got off the ground, and the arms collected and taken away.

Q. Did you see any ammunition taken?

A. There was a bag I carried away.

Q. What was in it?

A. Several parcels of ball cartridges, and, I believe, powder.

Q. Did you see them put in?

A. I had it in my hand when they were put in.

Q. Did you see where the bag came from?

A. From one of the prisoners.

Q. Did you see any of them searched?

A. Yes.

Q. What was found upon them?

A. Parcels of ammunition.

Q. Any ball-cartridges?

A. They were made up as ball-cartridges, and I understand they had slugs in them. I carried the bag to Bonny-

bridge, and then gave the bag to one of the Hussars; a corporal, I believe, of the Hussars; I do not know his name.

Q. Did you see the prisoner Baird there at the time?

A. Yes.

Q. Was he taken prisoner?

A. Yes.

Q. And carried to Stirling?

A. Yes.

THOMAS COOK—*sworn.*

Examined by Mr Hope.

Q. You belong to the 10th Hussars, I believe?

A. Yes.

Q. Were you at Stirling in the beginning of April, with a part of your regiment?

A. Yes.

Q. Had you occasion to follow a squadron on to Kilsyth in the beginning of the month?

A. Yes.

Q. On the morning of the skirmish at Bonnymuir?

A. Yes.

Q. Did any thing take place as you were going along the road?

A. Yes.

Q. About what o'clock was it?

A. About eight o'clock.

Q. Mention what took place. Did you meet any persons?

A. I was stopped on the road by five or six men.

Q. Was there any thing remarkable about those men?—had they any thing in their hands?

A. Yes, they had pikes, guns, and pistols, and one or two had a sword.

Q. Had each man a pike or a musket?

A. Each man had arms.

Q. Were any of them doubly armed in any way?

A. Yes, some of them were.

Q. What part of the road was it that you met them in; was it near Kilsyth, or near Stirling?

A. As nearly as I can mention, about half way.

Q. Do you know the road from Kilsyth, by Falkirk, to Edinburgh?

A. Yes, I have been it since.

Q. Was it before that road branches from the Kilsyth road?

A. There are some inns, and it was further on from the inns.

Lord Justice Clerk.—It was nearer Kilsyth?

A. Yes.

Mr Hope.—And about half way?

A. Yes.

Lord Justice Clerk.—There is a turnpike there?

A. Yes, there is.

Q. Was it beyond the turnpike?

A. It was beyond the turnpike.

Mr Hope.—Were those men walking along the road?

A. No, they were formed up.

Q. When you first saw them?

A. Yes.

Q. In what manner?

A. Right across the road, and the road equally divided.

Q. Did any person appear to be taking directions of the party?

A. There was one on the left dressing them—on the left.

Q. Did you see that man here yesterday?

A. Yes.

Q. Hardie?

A. Yes.

Mr Jeffrey.—My Lord, with great submission, I apprehend the prosecutor is bound, before he goes further, or indeed was bound, before having gone so far, to prove that the prisoner at the bar was present. My Lord, if he offers to prove that, I will let the examination go on.

Lord Justice Clerk.—It has been proved by a cloud of

witnesses, that the prisoner at the bar and Hardie were on the field at Bonnymuir; and, I apprehend, it is not necessary to prove as to what passed at this part of the road, where Hardie was one, and apparently the leader, that the prisoner was there.

Mr Jeffrey.—My Lord, I am aware of the general rule, but, with submission, it does not apply to this shape of the case. My Lord, the affair of Bonnymuir, and the junction of the prisoner and Hardie there, was a subsequent event, and they are now proving an event which took place before they have established any connection between the prisoner at the bar and the other individuals, as to whose acts and deeds they are proceeding to lead evidence. Now, I submit, that the rule is limited to the case of persons acting in the first place in confederacy with each other, and then doing any thing in furtherance of the common object (for it is limited to that) afterthey have separated; but there is no ground for holding, when you find parties afterwards connected, that their conduct has been connected throughout. It is only in consequence of the supposed combination and conspiracy between the parties, that evidence of what one did can affect the others; and you must first prove a combination to have existed anterior to that act; and, I believe, that will be found to be the import of the authorities, and is plainly the reason of the rule. In every one of the recent cases it has been so held,—that it is in consequence of a confederacy in the first place, that the acts of each of the party are made evidence against the others. If the acts done are in furtherance of a conspiracy proved to have existed antecedently, then, no doubt, you may say, that the act of each, as united, in furtherance of the confederacy between them, may connect each; but I conceive, that it is going beyond the rule to hold, that the proving subsequent connection will let in prior acts.

Mr Serjeant Hullock.—I wish the learned counsel had condescended to have cited those authorities, the import of which, he states, is in support of this objection. I should like now that he would inform me where any authorities of that sort are to be found.

Mr Jeffrey.—I refer to the page read by the Solicitor-General, citing the case of Lord Lovat and Lord Stafford; and I refer to the case of Brandreth, in which, in a passage I have marked, it was distinctly stated, and the ground on which it was ruled after debate was, that it was competent to prove what was done at Nottingham Forest, the prisoner not being on the ground, because he had previously given notice of something to be done at Nottingham Forest.

Mr Serjeant Hullock.—Those were the facts there, but that is not an authority, (and, I will venture to say, there is no authority of that sort to be found,) that is, not an authority for saying that, because I do shew that these persons were engaged in an ulterior act of Treason, a pure palpable act of sheer unadulterated Treason; therefore, I cannot shew the acts or declarations of these parties at an antecedent period before I bring them together, provided the declarations and acts are calculated to promote and further that conception of that further act, in which I shew them together. In the case of Brandreth, it is true, the objection was taken, because the facts furnished no other objection; and the counsel on that occasion, considering their learning and talents, it may be supposed, would take every objection to save their clients. It was the only objection that the facts furnished, and it was overruled at once. But I do submit to the Court, that upon principle in the first place, and then I shall shew that upon authority, this is legitimate evidence. About two hours afterwards, you have Hardie and Baird in the field of battle, in flagrant notorious rebellion. You have about two hours before, (for this transaction only goes to that state of things,) you have Hardie with five individuals. Hardie, who is in the field with Baird two hours afterwards, you have engaged in the High Treason which I aver to be committed by virtue of the delivery of that document which was read in evidence yesterday. What is that document in the first place; because, to entitle the crown to give the act in evidence, it must be shewn, that the thing which he did had a tendency to promote, and to produce, and, in fact, as it were, to terminate necessarily in, that flagrant act of rebellion which took place at Bonnymuir. On the trial of

Lord Southampton, something said by Lord Essex—when? previous to the prisoner's being there—was admitted and received as evidence. But what is the principle upon which these things are received in evidence: after I have connected Hardie and Baird together, I submit a letter written by Hardie a day before, signed and sealed by himself, without the knowledge of the prisoner at the bar, and sent to a remote part of the kingdom, or any other part of the world, provided it was intercepted, and was likely to carry the object into effect, would be evidence. Letters of that sort were read in 1794 on Hardy's trial, and Tooke's trial, and those trials which took place at that period—letters never heard of or seen by any of the parties before the trial. Why? because it was shewn that they were all members of the same Corresponding Society. Here, when we shew that all these persons were in active flagrant rebellion against the King's troops, are we, on any principle of law, to be precluded from shewing what Hardie did during the course of that night? I submit the Southampton case, which is to be found in the same book just now cited, in Phillips, 98, is with us; but, independently of authority, I submit, on principle, there is no reason why the parties are to be brought together before we can give this evidence.

Mr Jeffrey.—Now, my Lord, with great submission, I conceive that the argument upon the principle is clearly with us. It is hard enough in a criminal matter to make a person answerable for the whole of perhaps a great aggravation, which the offence which he had meditated, and as to which he had conspired, might receive from the act of another—from the uncommunicated and unknown act of an individual—merely because he had engaged in a minor degree, and in contemplation of a minor degree, of the offence which is exaggerated by that act of the unknown individual. But the principle on which that has been received into the law is, that the presumption is, that if persons were previously in concert to complete an unlawful object, they must be held to authorize those acts which any of them might commit to further that object, or at least, to have trusted themselves and their plot to other persons, so as to become bound by their

actions; but does the act which is thus sought to be brought in operation against one individual as committed by another, to whom he has at that time trusted nothing, to whom he stands in no terms of relation whatever, fall in with the same rule? I ask your Lordships to try this by a little exaggeration. If it is true a thing done a few hours before, but before there is any connexion between the parties, can be given in evidence, then a thing done a few weeks or years before may be brought in evidence. If one person, therefore, hatching a Treason for years, by slow incubation, forms a plan to carry it into effect, and afterwards an individual is brought to enter into a conspiracy with him, could the acts done before that conspiracy was formed, be given in evidence against him?

Mr Serjeant Hullock.—They would not weigh much, but they would be receivable evidence.

Mr Jeffrey.—If a person does trust another, so far as to embark with him in an illegal conspiracy, he commits his fortune, fame, and life, to the hazard of the indiscretion of that person, and cannot complain of his acts being given in evidence; but I cannot conceive by what principle they may prove the *corpus delicti* generally, in one instance, by going further back. How can you settle the guilt on me of the felonious act, as if it had been my own act, *facit per alium qui facit per se?* that is a maxim where the rule applies truly; but how can you hold that the act of a person whom I have no connection with is to bind me? Therefore, I submit, to offer the acts of an individual, with whom I have at the time no connection, as evidence of my guilt, is a solecism, and would require great weight of authority to insure its adoption.

I cannot gather from the quotation in Phillips any such inference as the learned Counsel thinks is deducible from it; and the cases in 1794 were all of them cases of letters written subsequent to the union of those persons as members of the Society certainly acts not done in the presence of each other, but letters after they were united, and with a view to the subjects previously discussed among them. I do not see any proof from this case; on the contrary, the import of the

words merely exemplify that general rule, that a person may be answerable for an act done before he came to the place or after he left it. I do not know the detail of that case; but there is no proof that Lord Southampton coming to that meeting, at which something was said, was the first time he saw that party—that is just a general exemplification of that which the learned author is exemplifying. I observe, from the context, that the acts of an accomplice bind each other; therefore, it merely proves it was something done while he was not there that bound him, and I do not contest that; but I say, in order to bind him, and establish the link, and conducting substance to communicate the guilt of one to the other, you must establish previous connection; and therefore I submit, on principle, the evidence now offered cannot be received; and I have yet heard no authority for receiving it.

Mr Serjeant Hullock.—I forgot to mention Damarée's case.

Lord Chief Baron Shepherd.—I will tell you what that case was. There was a conspiracy, by force, to pull down all dissenting meeting-houses; there one of the prisoners set out on the original plan; Purchase, the other person, had nothing to do with the original plan, but joined the conspirators while they were in the act of pulling down a house. The question there made was, whether Purchase was guilty of Treason? that is to say, whether all that had been done by Damarée and the other persons could affect Purchase; and the question was reserved for the opinion of the twelve Judges. Three of the Judges were of opinion that he was not guilty, because it did not appear he was connected with the original plan; but all the rest of the Judges were of opinion, that, as a treasonable conspiracy existed, he joining in the subsequent acts, was affected by all that was done by them before, upon this principle, that a man who did any act in a conspiracy became one of the conspirators, and he is affected by every thing done by them before. In the case of other conspiracies it is the same. In an indictment for carrying off Lady Strathmore, there was a very respectable attorney, Thomas Bowles, against whom there was not any evidence that he had any thing to do with the conspiracy in

London; but he joined the party in Durham, and there he took part with them. Mr Justice Buller tried the cause, that was afterwards brought before the King's Bench, and they decided on this principle, that he who takes part in a transaction in which the essence is conspiracy, is affected by every thing that has been done before he has joined it, because he adopted all the acts necessary to carry it into effect. Now, put this case of persons found in the Pretender's army at Derby, or in the advance, and no evidence that they were seen in the army before that time—If I do not mistake, several persons were tried there against whom the only evidence was their being seen at particular times and places with that army; but still all that had been done before was given in evidence against them; and I take it, the principle is laid down, that evidence having been given sufficient for the Jury to consider whether the prisoner is engaged in a conspiracy for treasonable purposes, any evidence of what had been done before in the same conspiracy is admissible, and is evidence for the consideration of the Jury.

Lord Gillies.—I am of the same opinion, and I can add nothing to what has been said in point of law; but the fact does not bear out Mr Jeffrey. We find, at ten in the morning of the 5th of April, 30 men are assembled on Bonnymuir; they cannot have met by accident, they must have marched from different places, and we must assume that they did so to join each other. Now the march of these parties had commenced at the moment when this evidence arose, two hours before they were on Bonnymuir, when they must have been on their march from Glasgow, and others from other places.

Lord Chief Commissioner Adam.—Independent of having reference to the cases, which cases, as they have been cited, are sufficient to establish the doctrine which has been laid down, I am of opinion that this must be admitted under the facts of the case; because it is established here, that there was a conspiracy carried into act, in which Baird and Hardie are actors; they are proved to be connected, not only at Bonnymuir, but more particularly afterwards, in the evidence that has been given, in coming from Bon-

nymuir and walking together. Under these circumstances, it seems to me impossible to say that the whole transaction may not be given in evidence, according to the principles that are very familiar to the law of this country. Taken independently of the cases, it seems to me receivable.

Lord Justice Clerk.—I am certainly of the same opinion, and I think there is complete evidence that there was a combination in the course of that morning of acts, all of which go towards the furtherance of the great act in which the parties are found engaged, and in the field. The connection is also proved by the material evidence that they were found armed together; there could be no arming together by accident: pikes and muskets are not to be found on the road, but these five are proved to be armed, and some of them doubly armed; and then they go on to Bonnymuir, where they join others, and, therefore, I am clear on the fact, on the principle, and on the authorities, that this evidence is admissible.

Mr Hope.—You have stated, in answer to the last question, that this party of five or six had been dressed to the left by Hardie, whom you saw here yesterday?

A. Yes.

Q. Did you stop when you saw these people, or did they speak to you?

A. They stopped me, and ordered me to halt when I came within about twenty yards of them.

Q. Did you then speak to them, or did they speak to you?

A. I did not halt; I rode to them, and they took and surrounded me directly.

Q. Did they come close round you?

A. Yes, some of them had hold of my horse's head, and some on one side and some on the other.

Q. They had hold of the bridle?

A. Yes.

Q. What did they say then—did they state for what purpose they had stopped you?

A. They asked me for my dispatches.

Q. Was that the first thing they said?

A. Yes. I told them I had none.

Q. What was said next?

A. They asked for my ammunition.

Q. Did they say any thing about your arms?

A. One man, in particular, wanted to take my arms away from me,—a tall man dressed in a black coat.

Q. Do you see the man at the bar?

A. No; he was not taken.

Q. Did they take your arms from you?

A. No.

Q. How did you prevent that? or what followed?

A. I told them I was a friend to their cause—that I was a weaver myself.

Q. Had they told you what was their cause?

A. No; only that they were seeking for their rights, as honest men ought to do.

Q. And you then said that you were a friend of that cause?

A. Yes; and hoped they would not molest me.

Q. That you had been a weaver yourself?

A. Yes.

Q. What else did you say to them?

A. They shook hands with me, and asked me if I could read.

Q. What was your reply to that?

A. I told them yes.

Q. Did that answer of yours lead to any thing?

A. They gave me a hand-bill.

Q. In consequence of that answer?

A. Yes.

Q. Where was this hand-bill taken from?—from the pocket of any of them?

A. Yes, it was taken from the pocket of one of them.

Q. Did you observe any other paper than that hand-bill?

A. Yes; it was taken from a roll of them; they might be of the same sort; they appeared to be so.

Q. They appeared to be of the same description?

A. Yes.

Q. Of the same kind?

A. Yes, as near as possible; they were of the same size and appearance; they were rolled up together as hand-bills generally are.

Q. How many might there be?

A. From fifty to a hundred.

Q. Was that paper wet at all? did it appear to be newly printed?

A. I will not pretend to say that, not to a certainty. I did not take that particular notice whether it was or not.

Q. What did they say to you when they gave you this hand-bill?

A. They said every thing in that was true.

Q. Did they make any other observation about it?

A. They told me to read it, and to take and shew it to my comrades.

Q. Did they make any other remark upon it?

A. No, they did not.

Q. Did they tell you for what purpose they wished you to shew this hand-bill to your comrades?

A. No, they did not; they said every thing in it was true.

Q. Did you look at that hand-bill before you left the party?

A. Yes.

Q. Did you see what the hand-bill was about at that time?

A. Yes, I saw the head of it.

Q. Do you recollect what that was?

A. Yes.

Q. What was it?

A. It was an Address to the Inhabitants of Great Britain and Ireland.

Q. Did you see any thing at the foot of it?

A. Yes; the date of it I took particular notice of.

Q. What was the date of it?

A. The 1st of April, 1820.

Q. Did you observe whether it bore to be dated from any particular place?

A. I will not pretend to say that.

Q. Had it any name or signature at the bottom of it?

A. "By the Committee" for the organization of a provisional government.

Q. After looking at this hand-bill, did you make any remark to them upon it?

A. No, I did not.

Q. Did you look at the paper again after you passed?

A. Yes.

Q. Where did you go to after that?

A. Towards Kilsyth; at least I went to a public house first, and had a glass of spirits.

Q. Did you see your commanding officer at Kilsyth?

A. Yes.

Q. Who was he?

A. Lieutenant Hodgson.

Q. Did you say any thing to him about this paper?

A. Yes.

Q. Did you give it him?

A. Yes, him and Mr Davidson together.

Q. Did it remain with them?

A. No, he gave it me again immediately.

Q. Did it continue in your possession?

A. No.

Q. What became of it?

A. I gave it to Mr Hodgson before we came to the place where we stopped, in going towards Bonnymuir.

Q. Can you swear positively that the paper which you received from one of this party who stopped you on the road, was the same paper which you gave to Lieutenant Hodgson upon the second occasion?

A. Yes.

Q. Were the remarks made regarding this hand-bill, at the time it was delivered to you, made by more than one of the party—did they appear generally to take an interest in it?

A. They all knew of it.

Q. Did more than one make any remarks on it—was the

desire to shew it your comrades expressed by more than one?

A. I cannot say for that; they were all round me at the time they gave the paper.

Q Did they all see it given?

A. Yes, every one of them.

Mr Hope.—Now, my Lord, I propose that that paper should be read.

A Juryman.—Did you shew the paper to any other person than Lieutenant Hodgson?

A. Lieutenant Davidson saw it; Lieutenant Davidson and Lieutenant Hodgson were together, and I shewed it to another person on the road, one of the Kilsyth troop.

Q. But it was never out of your possession?

A. Never out of my possession at all.

Mr Jeffrey.—Now, my Lords, in submitting to your Lordships that this paper should not now be sent to the Jury, I am aware, as I have no doubt your Lordships are, that the objections I am about to state are nearly akin to those which were stated without effect on a late occasion; but, my Lords, in a question of this nature, I think it my duty again to submit to your Lordships the grounds upon which I humbly conceive that this paper ought not now to be received.

My Lords, the grounds upon which I object are twofold; in the first place, and mainly, I do humbly submit to your Lordships, that the evidence which has already been brought has not proved the paper that is proposed to be read to be the paper that was delivered to Serjeant Cook by the party that met him upon the road. My Lords, that paper is, no doubt, sufficiently traced from his hands into the hands ultimately of his commanding officer, Lieutenant Hodgson; but there I say that that paper is lost; for Lieutenant Hodgson swore he gave that paper to Colonel Taylor, and that he received from him, the morning after, a paper resembling that, and which, he has every reason to believe, may have been, or is the same paper; but he says he cannot swear that it is so.

Now, my Lords, in a matter so important as laying down

a rule of evidence as to the admission of a written document, upon the identity of which, in many cases, your Lordships are aware the whole matter of dispute, the life of a party, and interests of the most important nature may exclusively depend, I do submit your Lordships are called on to consider and weigh most maturely the grounds that are offered, and the circumstances in which they are offered, for receiving any species of evidence as to the identity of a paper, short, in the first place, of direct proof of its identity; and, in the next place, short, as I submit it is here, of the best evidence of its identity that is proved to be in existence.

My Lords, if I had no more to say than this, I should, with submission, think I had said enough to prevail in my present plea.

My Lords, the rule of that law under which your Lordships are now sitting is, in all matters, and more especially in a trial for life, that the best attainable evidence must be brought forward, and that no inferior species of evidence, even if *sua natura* admissible, shall be received. Now, has any evidence been had here that Colonel Taylor is not alive? On the contrary, has not the evidence that has been brought forward established, so far as it goes, that a person is still in existence, who, by being cited here, would have completed the chain of evidence, which, I say, is now broken and imperfect; and, therefore, my Lords, if it were possible, in any case to have recourse to supplementary evidence, of the tenor of a written instrument, the prosecutor has not put himself in the condition in which alone he can offer such inferior evidence; and, upon that ground, I would be inclined to rely with unlimited confidence on this objection. It is plain, better evidence might have been produced to prove that which the inferior evidence is now offered to establish. But if the best evidence is lost, and if that is the only admissible evidence, the consequence is, not that incompetent evidence can be received, but that the thing cannot be proved. In a case of Treason, if one of two intended witnesses should have died, or become insane, the result is, not that you are to take the inferior species of evidence, or to believe one witness, but the delinquent has the benefit of

it; and therefore if it was proved that they could not complete the chain, the consequence would be, that I should not be bound by that chain, and should go free. But I submit to your Lordships, that it is of all things the most dangerous, and worthy of more consideration than any suggestion of mine, upon what a dangerous extensive field of innovation, according to my humble conception, the Court will go, if it allows evidence of the tenor of a writing, by what I will say comes substantially to nothing more than this—merely recollection, and imperfect recollection, of the words, import, and tenor of that writing. My Lords, I do not say you are not entitled to prove the words where the writing is gone by an accident; but here is a paper produced and tendered in evidence;—we have had from Lieut. Hodgson and Serjeant Cook as much as we could get, and I do not object to that,—their recollection of the tenor of a paper, as to the identity of which they could not swear; but, by permitting the paper now produced to go to a Jury, as the same paper that was given by the party to Cook, you do more than you would do if you had asked Cook,—You cannot remember more than the signature and date of it; take up that paper and refresh your memory by reading it, and say whether that is the paper you read before. My Lords, are you entitled to refresh the memory of a witness against a prisoner on trial for his life, and expose him to the hazard of the witness's mixing up his faded impressions with some similar ones on the paper? My Lords, I may refer to your Lordships, and I believe to my Lord Gillies, for a recent instance in which that occurred. I allude to the case of M'Inlay for taking unlawful oaths, in which a witness was stating the import of an oath, and I asked him whether he recollected that merely from hearing the party utter the oath; and he said he did not think he could recollect it from that, but his recollection had been refreshed or aided by having read something in the newspaper, which purported to be a copy of it. The Court ruled, that a witness who did not speak to the acts of parties, but spoke from the possible mixing up of suggestions received on his mind with the thing itself, which might go to the prejudice of the prisoner, could not be allowed to be examined. Now,

I ask your Lordships, whether it would not be doing less if you put it to the memory of the party, who alone was party to the transfer of the paper. If you had shewn it to Lieut. Hodgson and Serjeant Cook, and said, "Look at that paper, you say you only recollect the general address, but read that paper through, and then say whether you think you recollect any more after having read it than you did before:" that would clearly be disallowed; and yet it would be more direct evidence, because it would be enabling the witness to state whether the paper he had got was of the import which he came to swear, by this help and assistance, that it was of, and perhaps to say that he recollected all the words of it. As the case now stands, we have evidence merely that it was a paper like that, headed so and so, and signed so and so; but it was out of the hands of the party, and all the belief of its being the same is founded on that resemblance, because the fact of getting a paper back plainly goes for nothing at all. There the identity of the evidence is dropped, and all you have now is the recollection of the parties who got it. But I will ask whether they have sufficiently established this paper to be so like that on the table, as to entitle that one on the table to be read, and in this way handed in the first instance to the Jury. There are no marks put on it by the evidence. There is a great variety of hand-bills said to be issued, and a great many placards have been prosecuted in the country, some of the same tenor, and using the same slang words that occur here; and, therefore, I humbly submit, that allowing this sort of identification of a written paper, is allowing loose words on recollection to come in the place of a written document, and to visit on the unhappy person at the bar the whole import of a written document, of which a very small part is recollected by the only persons who are called to identify it. My Lords, upon that ground, I do humbly submit these papers ought not to be read.

I have another ground, my Lords, I think, in this case. It is admitted that this paper was delivered over by a party of men, of whom the unhappy prisoner was not one; it was delivered over without being read in the hearing of the party, and there is no proof of any connection between

these individuals who so gave, or the one who so gave, this paper, and the prisoner; and there is no evidence that the prisoner at the bar was either aware of what was then done, or had the least intimation or connection with the parties. It was said the facts did not bear that out, because it is proved the persons met at Bonnymuir. I believe that that meeting was in a considerable degree casual; and if it was—if it consisted partly of persons from Camelon, and partly of persons summoned from a distance, the fact of their having met there in arms would not prove any antecedent concert between them, so as to unite them in a proved conspiracy of an earlier date; and, therefore, the objection appears to me to be in full force, that there was no such connection between the parties as to render the paper delivered by one evidence against the others. But, on the first objection, I submit, it would be extremely dangerous to hold this paper to be so identified to be the paper given to the party, as to entitle it to be read.

Mr Solicitor-General.—My Lords, we are called upon on this side of the bar to answer an objection stated in very singular circumstances, because it is an objection which was repelled in the course of the trial of yesterday upon one of the grounds on which it is maintained, and it is an objection which was repelled in the course of the trial of this day upon another of the grounds, which has been enlarged upon in behalf of the prisoner. The question before your Lordships is, whether this paper is sufficiently identified to permit it to go to the Jury—whether it is sufficiently identified to permit it to be read, so that the Jury may have the substance of it before them, and so that they may exercise the functions that belong to them upon it?

My Lords, if the question had been here, whether we were entitled to offer what is called secondary evidence to prove the contents of that paper, I should have had no hesitation in maintaining to your Lordships, that we were entitled to prove its contents by other means than the production of the original and identical document. I should have maintained to your Lordships, if it had been necessary, that we were entitled to prove its contents, just in the same way as in a recent instance occurring on the other side of

the Tweed, but occurring and determined by the same law which you are now administering,—a case in which the inscriptions on all the flags were permitted to be proved otherwise than by the production of those original—documents we cannot call them—I do not know how to denominate them—and if that be the rule of evidence, it seems to be of no importance whether the writing or printing is impressed on paper or silk, or what may be the precise number of lines which this printing may contain;—or whether such paper or silk be elevated on poles, or carried in the pocket of the criminal.

But that is not the question here—the question is, and to it alone I am to direct your attention—Whether this paper is sufficiently identified by the evidence before you, to allow it to be sent to the Jury? Now, with regard to that, your Lordships see the evidence taken down before you. If this were the first time upon which it occurred, I should submit it is most clearly proved, beyond the power of reasonable doubt, that the hand-bill or placard is sufficiently and clearly identified. The only objection to the identity is made to rest on this: that it was a few hours out of the possession of one of the party. But this objection becomes insignificant, when the whole evidence is considered. For the party had read it—he had seen its general appearance—its address and signature—and was acquainted with its contents. To all these he has distinctly deponed. And not only, therefore, have you that evidence of identity which arises from its general appearance—and I know no reason why a piece of paper may not be identified by its general appearance as well as any other material substance—not only is there the evidence of identity from its appearance—you have the evidence of identity from its address at the top of it—you have the evidence of identity from the signature at the termination of it; and, in addition to that, the confirmation of the general identity—the tenor of its contents. If the question had related to the identity of any other thing, or substance, there could have been no room for argument, and to the proof of identity of this paper a different rule cannot be applied. But I ought to apologise to your Lordships for presuming to offer anything in support

of a judgment pronounced no longer ago than yesterday, by a full Bench, after full pleading and deliberate consideration.

If there had been nothing more than this in the argument for the prisoner, I do not know that I should have troubled your Lordships with a word; but reference was made to a decision by the Court of Justiciary, in a case of which I entertain a distinct recollection; and I beg to say, the account given of it is not accurate; and I shall state to your Lordships the principles of that determination:—My Lords, the witness's name was Finlayson, who was called to speak to the tenor of an oath, stated to have been administered and taken at a certain secret meeting at which he was present. The public prosecutor was attempting to prove the import and substance of that oath. There was not any question as to the identification of a paper; no paper was libelled upon, and no paper can be produced in that Court which is not libelled on. But the question was, Whether the witness could speak to the import and tenor of the oath administered in his presence? If the printed trial can be got, it will appear what the witness said. The witness was asked about the substance of that oath; and, in the course of the examination, the witness said, that if he had not read it afterwards in a newspaper, he would not have recollected one word that was in it; that he would not have recollected the substance of it so as to have given any account of it. He had no recollection of the oath at the time of its being administered, he stated that he would have recollected nothing of it if he had not read what was said to be a copy of it in the newspaper. Now, in these circumstances, who could say that the import of the oath was proved? There was no parallel between that case and the present; in one respect it could not be prevented from going to the Jury. It is impossible to prevent parole proof from reaching the ears of the Jury, but the Court laid it down, and every body acquiesced in it, that the import of the oath was not proved, and it was the duty of the Court to tell the Jury, that it was not proved. Now, I submit to your Lordships, that in principle and in fact, that case affords no authority, nothing to bear upon the question at present before you. With these observations, I submit the objection ought to be repelled.

My Lords, I may be permitted to suggest another observation, because it replies to a remark which has been repeatedly urged on your attention, and on that of the Jury. It is said that we are here on a question of life and death—My Lords, I admit it; but we are here on a question of infinitely greater importance than life and death—we are here on a question on that law by which the constitution of the country is to be protected, and I am yet to learn, that the life of an individual, be he great or humble, is to be put in comparison with those principles of law by which the constitution is to be sustained: I say, whether life or death, or property, or any thing valuable, or invaluable, is at stake, the same inflexible rules of evidence must be adopted by your Lordships. With these observations, I leave the case in your Lordships' hands.

My Lords, I may perhaps be admitted to return for a moment to a principle that was adverted to upon the other side: it was said, that in no case in the Court of Justiciary was it possible to put a paper into the hands of a witness, to ascertain whether it was the same in its contents as that which the witness was called on to prove by parole testimony; and it was said, that such was the ground upon which it was found to be impossible to refer to a newspaper, or any thing to refresh the witness's memory. This is certainly a delicate question, but I believe I can refer to the proceedings in the case of Joseph Gerrald and others, in the year 1794; and if I had been aware of this objection, I could have brought many cases of the same kind, to shew that the principle assumed is not well founded in our municipal practice. The question in that case was, what was the nature of a certain speech at a seditious meeting, delivered by Joseph Gerrald, a speech of some length? The question there occurred, was the public prosecutor entitled to put into the hands of the witness a newspaper report of the speech, and to ask, was it of the tenor and import of that which he heard delivered at the meeting? Upon which the determination of the Court of Justiciary was, and it was done with the authority, and upon the debate of counsel, as able as any that ever adorned any of our establishments, and under Judges that never were surpassed,—that it was

competent to put into his hands that newspaper, and to ask, whether the speech was of the tenor of that report.

Lord Justice Clerk.—It was proved in that case, that the British Convention had a newspaper of their own, in which the minutes of the Convention and its proceedings were given from time to time; and, therefore, it was important to know whether that paper was correct or not; it was a paper called the Gazetteer.

Mr Solicitor General.—Quite true, that newspaper advocated the principles of the British Convention, but it could not be considered, and was not pretended to be, a record of that Society to which it was supposed to belong; and I submit the general principle was therein discussed, and was there determined, whether it was competent to make use of any paper to refresh the memory of the witness.

Mr Jeffrey.—I do not think it necessary to trouble your Lordships on the last point; the true question is, not whether it is allowable to refresh the memory of witnesses, but about the identification of a document, whether that is made out sufficiently to go to the Jury. I submit again, that it is not; because the best proof of identification, although in existence and accessible, has not been brought forward; and that the evidence, such as it is, that remains, is evidence of a description that has never been sustained to prove the identity of a document. You may prove the identity of a book or a bit of paper, by marks; but do they pretend this paper is identified by any circumstances from others? My Lord, is there any identification here, as if the paper had been marked? A book may have marks in the margin, and blots or casual appearances may identify a shorter writing; but this is not so identified. It is endeavoured to be identified by the contents of it; and I say, evidence of that is evidence of words read, to be pieced out by words written; and, therefore, it ought not to be received. On the other branch, I am unwilling to detain the Court by resuming an argument of which they are already in possession, and of which they will dispose according to the suggestions that have been made.

Lord Justice Clerk.—After considering, coolly, the argument we have heard, and which the counsel for the prisoner will understand, we in no degree object to, because this

point, and others, may be re-urged again and again, without offence to the Court, we are of opinion, as was decided yesterday, that this paper has been sufficiently identified by the evidence to go to the Jury; and it is quite unnecessary for me, after the full discussion it underwent yesterday, to go further than say, that we are of opinion it is admissible to go to the Jury.

JOHN GOWIE, Officer of Excise in Falkirk—*sworn.*

Examined by Mr Drummond.

Q. Did you make the plan, of which that is an engraved copy? (*Handing a paper to the witness.*)

A. I did.

Q. Is it an accurate representation of the ground, which it purports to be, to the best of your knowledge?

A. I consider it to be so.

[*A Plan of the scene of action on Bonnymuir was delivered in.*]

Lord Advocate.—On this plan there are two portions of it that had trees growing on them?

A. Yes.

Q. And the plan is correct in that particular?

A. Yes.

Lord Justice Clerk.—As they actually exist?

A. Yes.

Lord Advocate.—One of these is immediately at the end of a wall that is described there?

A. Yes, on the east side.

Q. Is there a gap or opening in the wall there?

A. There is.

Lord Justice Clerk.—Where is that gap?

A. There is a reference in the plan: the letter D is where the gap is.

Q. And the dyke runs in the line B D?

A. B is the gap in the wall.

Lord Advocate.—What sort of ground is that wood planted on: is it swampy?

A. It is a little swampy about the middle of it.

JAMES HARDIE, Esq.—*sworn.*

Examined by Mr Serjeant Hullock.

Q. You are a Magistrate, residing at Glasgow?

A. Yes.

Q. Are you a Magistrate for the town of Glasgow, or for the county of Lanark?

A. For the county of Lanark, which includes the town.

Q. Glasgow is within, and part of the county of Lanark?

A. It is.

Q. How long have you been an acting Magistrate of that county?

A. I think about three years—it was in 1816.

Q. You were examined as a witness yesterday?

A. I was.

Q. A person of the name of Hardie was tried yesterday—was he not?

A. He was.

Q. Did you see him here yesterday?

A. I did.

Q. Did you see him at Glasgow, in the course of Sunday the 2d of April?

A. I did.

Q. At what hour of that day did you first see him?

A. A few minutes past eight, or from that to within the half hour, I think.

Q. And where did you see him?

A. In Duke Street.

Q. When you first saw him, was he alone, or in company with any, and what number of persons?

A. He was in company with about from twenty to thirty people.

Q. Were they walking or standing?

A. They were standing.

Q. What were they doing?

A. They were standing about the watchman's box, and one individual reading an address which was pasted on it.

Q. Was he reading it aloud, or to himself?

A. He was reading it aloud.

Q. Did you, upon getting up to the party, stop?

A. I did.

Q. Did you hear what he read?

A. I did.

Q. Did you, whilst he was reading, take any means to ascertain whether he was reading what was so pasted up, faithfully?

A. I did.

Q. Did you follow him whilst he was reading?

A. I did.

Q. Did he read aloud the portion of the paper which you heard him read, fait. fully and accurately?

A. He did.

Q. Did he read it so loud, that the persons who were standing around him at the time could hear him read it?

A. He did.

Q. Did you, after he had finished reading, or in the course of his reading, do any thing, and what?

A. I made my way through tne mob, for the purpose of taking it from the watch-box.

Q. By *it*, you mean the paper?

A. The paper.

Q. Did you succeed in doing that? and if you did not, why did you not?

A. I was prevented by several individuals composing that mob.

Q. Do you mean, that several individuals were active in preventing you?

A. Yes.

Q. To what number?

A. I think, five or six.

Q. Did you know any of that number?

A. I did not.

Q. Have you seen any one of that number since that time; and when last?

A. I have.

Q. When?

A. I saw him at the bar last.

Lord Justice Clerk.—Did you know any one except Hardie?

A. None but him.

Mr Serjeant Hullock.—Are you quite sure that the person who was tried yesterday, and stood at the bar during the greater portion of the day, was one of the party who obstructed you from taking down that address?

A. Perfectly certain.

Q. What did Hardie do? did he do any thing to you?

A. He got between me and the box, and hustled me off the pavement.

Q. Did he touch your person, or any part of your clothes?

A. He did.

Q. Describe the manner in which he so did.

A. He took me by the neck, and the others assisted him in putting me off.

Q. Off what?

A. From the pavement—putting me upon the street-way.

Q. Did they put you off from the pavement to the street?

A. They did.

Q. Was that done by violence—by force?

A. It was by force.

Q. During this proceeding, did either you say any thing to Hardie, or did he say any thing to you?

A. I told him that I was a magistrate, and that it was a very improper address; and I insisted on having it down.

Q. Did you tell him that, while he was endeavouring to put you off, or afterwards?

A. It was after he hustled me off.

Q. Before he hustled you off, had any thing passed between you and him?

A. No.

Q. No words?

A. No.

Q. Did you inform him, on being hustled off the pavement, that you were a magistrate.

A. I did.

Q. Did you inform him that the paper was one of an improper description, and that you wished to take it down?

A. I did. I told him that it was a most improper paper to be there, and insisted on having it down; and made a second attempt.

Q. What did he say, upon your making that observation?

A. I made the attempt.

Q. Did you succeed any better than you did the first time?

A. No.

Q. Why?

A. He seized me round the body with his two arms, and turned me off the pavement a second time; and told me, he would part with the last drop of his blood, sooner than permit me to take down that Address.

Q. Did he use the word address?

A. No: it was "the paper," I believe.

Q. Did you give up the attempt in consequence of that?

A. I did.

Q. Did any thing more pass in your hearing?

A. There was a gentleman spoke to me immediately afterwards.

Q. Did he speak to you aloud, or was it when you quitted the crowd?

A. It was after I quitted the crowd.

Q. He did not speak to you in Hardie's hearing?

A. No: I do not think it was.

Q. If you had not been pushed from the pavement in the manner you state to us, would you have taken that paper down from the watch-box?

A. Most unquestionably.

Q. Was the reason for desisting in the attempt, the force that had been applied to you by Hardie and the other persons?

A. It was.

Q. In what way did the paper appear to be fastened against the wall?—by nails

A. It was by paste.

Q. As they paste up play-bills or hand-bills?

A. The same as hand-bills.

Q. You say it was against a watch-box?

A. It was pasted against the watch-box.

Q. Did that watch-box exhibit the appearance of any former papers being pasted there?

A. It did.

Q. A sort of place for sticking bills, for giving information to the people?

A. It was.

Q. It appeared to have been so employed before?

A It did.

Q. Now, you say that part of that paper was read by a man who formed an individual of that crowd?

A. Yes.

Q. And that portion of it was faithfully read?

A. Yes.

Q. Have you, since that, or did you soon after that, see any other paper of a similar description?

A. About two minutes after I parted with the crowd, I saw another paper pasted on a wall.

Q. Did you read that paper which you so fell in with upon the wall?

A. I did not read it upon the wall.

Q. Was that pasted up in the same manner as the other appeared to be pasted upon the watch-box?

A. It was.

Q. Did you take that paper down from the wall?

A. I did.

Q. Did you afterwards read it?

A. I did.

Q. Did you, upon reading it, afterwards find that it contained the same paragraph or clause that the former contained?

A. It did.

Q. Do you remember observing the heading of the address pasted against the watch-box?

A. I did.

Q. State what it was.

A. I cannot at this moment state.

Q. You do not know how it began?

A. No.

Q. Do you remember the date of it?

A. The 1st of April.

Q. Any place?

A. At the bottom, I think. I have not read it since that time.

Q. It has been out of your custody, perhaps?

A. No, it has not; but I laid it by, with other papers.

Q. Have you that paper that you took from the wall?

A. I produced it yesterday in court.

Q. Is the paper you produced yesterday in court, the same paper that you took from the wall?

A. It was.

Q. Is that the paper which you had yesterday?—(*Handing a paper to the witness.*)

A. It is.

Q. Does that paper contain, now, the paragraph, or the part that you heard read on the Sunday morning?

A. It does.

Q. Just state what words it begins at, and where it ends; and it shall be read.

A. It commences with "Soldiers!"

Q. And terminates at what?

A. With "Too, too long in thraldom."

Q. Now, at the time you went up and found these men standing, and a man reading; was he in the act of reading when you went to the place?

A. Yes.

Q. Did he appear to have been reading, as a man who was continuing to read something which he had begun to read before that time?

A. He was.

Q. You did not hear him begin to read for the first time?

A. No.

Q. How long could you ascertain that he was reading before you got to the place?

A. I cannot ascertain that; but I heard the sound of his voice before I knew what it was.

Q. You heard the sound of his voice before you got to the spot?

A. I did.

Q. He was in the act of reading when you got up?

A. He was.

Q. And just when you got to the spot, you heard him begin that paragraph?

A. Yes.

Mr Jeffrey.—My Lord, I must object to that being read.

Mr Serjeant Hullock.—I am not going to read it yet.—You reside at Glasgow?

A. I do.

Q. Had you seen any address of the description of that which the man was reading, before the time that you first went up to that party?

A. No.

Q. Were you in the habit of passing along the streets of Glasgow, Duke Street and other streets, the day before that, and in former days?

A. Always when I was at home.

Q. Did your avocations lead you past that watch-box, the day before, or the week before?

A. Every day.

Q. Can you say whether there was an address of that sort pasted on the watch-box, on the Saturday, the day before?

A. I could not take upon me to say that.

Q. Did you see any?

A. No.

Q. Do you remember whether, on the Monday, the day after this Address was pasted up, there was any difference in the streets of Glasgow; whether there were any tumults?

A. Very great.

Q. Very great crowds?

A. Great collections of idle people.

Q. Did these people appear to be [illegible]

A. They appeared to be working [illegible]

Q. Were you at home on the Tuesday?

A. I was; but chiefly in the Barracks.

Q. What time did you go to the Barracks on Tuesday?

A. In the morning, I think, about ten o'clock.

Q. Before you went to the Barracks in the evening, and on the Wednesday, did the same crowds continue?

A. It was fully worse on the Wednesday.

Q. Give us the state which they exhibited on the Wednesday?

A. It was just a mob from one end of the town to the other, and people shutting their shops, and in a state of terror.

Q. What do you mean by people shutting their shops? Was that in the evening after the business was over; or in what time of the day?

A. No; it was between three and four o'clock in the afternoon.

Q. Was that generally the case with the shopkeepers?

A. Generally.

Q. In the public streets?

A. In the public streets, and in the private streets also.

Q. That is, in those which were less frequented?

A. Yes.

Q. Is that a usual proceeding at Glasgow, except on Sundays?

A. Not at all.

Q. To what cause do you ascribe that measure?

A. In consequence of a feeling from the crowd.

Q. Did these people march in crowds, or in regular order, or in any particular manner?

A. They were generally in crowds; but I saw several parties marching in military order.

Q. Describe what order that was, which you call military order?

A. They were in rank and file, I think; four men abreast generally.

Q. Did they keep the step?

A. Yes.

Q. Did you see any of them formed, or did they form spontaneously?

A. No; I merely saw them marching along the street after they had formed. They were on their march.

Q. Whether they were formed by accident or by design you cannot tell of your own knowledge?

A. I cannot.

Lord Justice-Clerk. They marched as if drilled?

A. They did.

Mr Sergeant Hullock. Did they preserve their step like regular soldiers—like the ordinary military?

A. They did.

Q. To what place did they march?

A. They seemed to be going towards Bridgetown.

Q. What is that?

A. One of the suburbs of Glasgow, to the eastward of it.

Q. Is that a populous suburb?

A. It is.

Q. Is the population of that suburb of the same description as those you have described as being in the streets?

A. It is.

Q. Did these streams of people all flow towards Bridgetown? did the current set that way?

A. Chiefly; but then there was a current going in every direction at that time.

Q. Did the men who were marching in regular step set one way?

A. They did set one way, towards Bridgetown.

Lord Justice-Clerk. Was there any thing peculiar at Bridgetown at that time, have you any reason to know?

A. After what happened on Sunday morning, I went through Bridgetown, where I had been very much engaged for some time before, to see the number of addresses there might be there; and I saw plenty of them.

Mr Sergeant Hullock. When was that?

A. On Sunday afternoon.

Q. After you had heard the reading, and after you had detached this from the well.

A. Yes.

Q. What do you call plenty of such addresses as these?

A. When passing through Bridgetown, I did not see less than a hundred of them.

Q. Pasted against the walls?

A. Pasted against the walls.

Q. When you yourself went to Bridgetown for the purpose you have just told us, in what state did you find the place as to its population?

A. There were not many people in the place; it was not crowded like the streets of Glasgow.

Q. Did it occur to you, or did you go to Bridgetown on the following day when these masses of people were going in that direction?

A. No, I did not.

Q. Then you cannot tell us the state of Bridgetown on Monday, Tuesday, or Wednesday, can you?

A. No, I cannot.

Q. As to the appearances, which you have been speaking of, which the streets exhibited on the Monday, part of the Tuesday, till you went to the barracks, and on the Wednesday, did any of these appearances exist on the Saturday, the day before the morning when you saw that Address?

A. None of them.

Q. You are an acting magistrate?

A. I am.

Q. Did you, in that character, think it your duty to adopt any measure on the Monday, for the public peace and tranquillity?

A. I did on the Sunday.

Mr Sergeant Hullock.—I do not know whether I am at liberty, having asked Mr Hardie, a magistrate, whether he did not deem it necessary to take certain precautions for securing the public peace, to pursue that, and ask, what those steps were.

Lord Justice-Clerk.—I see no objection to that.

Mr Sergeant Hullock.—I do not wish to do it if there is the slightest doubt.

Mr Jeffrey.—I am not aware how a great part of this evidence bears upon the case. If we have lost sight of Mr

Baird and Mr Hardie, I do not know where it is to go. I do not know how it is to apply to this case at all.

Mr Sergeant Hullock.—I think, my Lord, as in the case of Brandreth, that this inquiry may be pursued, because I shewed the consequences of this Address were serious, immediate, and alarming; and then, without being obliged to satisfy every body why it is evidence, I conceive I have a right to shew what means were deemed necessary by the magistrates of the county to preserve the peace.

Lord Chief Baron Shepherd.—That only goes to their judgment.

Mr Sergeant Hullock.—The matter is not of importance; and, if there is the slightest doubt, I will not press it.

Lord Justice-Clerk.—I understand, that Mr Sergeant Hullock wishes to ask questions of Mr Hardie, with regard to those measures which the witness thought necessary, in consequence of what he saw in Glasgow after that publication on the watch-box.

Mr Jeffrey.—With great submission, I conceive it to be quite incompetent, my Lord. In so far as the evidence has been directed to facts, shewing the effect produced by this publication, faintly and imperceptibly as it is connected with this case, I have not objected; but if we are now to go into an inquiry of what it suggested to the minds of certain individuals,—into the question, how it operated on Mr Hardie's judgment, and what effects it produced on the town council,—we may be entertained with a history of all the people put into Bridewell, and their several examinations. As soon as we get to the fact of what was the state of the town, what the general symptoms apparently produced by this poison, I say we have got as far as we can go; but, if we go into the remedies advised by one doctor or another, or the effects of those remedies, I submit to your Lordship, that we are launching out into a length which is unnecessary here. They are to establish the effects of this proclamation, and they are to explain these by the appearances that ensued. But what Mr Hardie thought proper to do is another question. He may bring forward all the magistrates, each with his own nostrum, to cure the malady; and then

it will be to be considered, whether the *vis medicatrix naturæ* had not the most hand in it. But I submit, that thus to travel into the outworks and extrinsic flourishes and furbelows of a case of this kind, is foreign to the duty of the Court, and that the gentleman having already proved the effects actually produced, it is in vain to inquire what any person thought on the subject.

Mr Sergeant Hullock.—My Lord, as I have heard no objection but flourishes and furbelows, and something very amusing about maladies and nostrums, if I understand the observations of the learned gentleman, I shall say nothing in reply to them.

Lord Chief Baron Shepherd.—It is evidence, and it was done in the Derby cases. The disturbed state of Nottingham was proved, and what the magistrates did.

Lord Gillies.—What is the precise question you propose?

Mr Sergeant Hullock.—I asked, did you deem it expedient to take any measures for preserving the tranquillity of Glasgow, in consequence of what you saw?

A. I did.

Q. What were those measures?

Lord Justice-Clerk.—The counsel for both sides will observe, there is a great difference in the manner of putting the question. To go into the detail would be out of the question, and that is not intended to be prosecuted; but a general question,—Did you, in consequence of the necessity for preserving the public peace, take any measures, and what were those measures?—does not appear to me to be objectionable. The detail I should not wish to be gone into, because it would be wasting time.

Mr Sergeant Hullock.—With respect to wasting time, my Lord, I might submit that that is no objection at all; but I should be sorry to press any thing which is at all doubtful on sound principle; I therefore leave it there. I should be sorry to put a question that is doubtful in the mind of the Court.

Lord Chief Baron Shepherd.—Put your question.

Mr Sergeant Hullock.—I will put it, if your Lordship will permit me.

Lord Chief Baron Shepherd.—I see no objection. A

magistrate proves the state of the town, and then it is competent to prove what he did in consequence. The same thing was proved also in Watson's trial: that one of the magistrates desired the attendance of the military, and so on.

Mr Sergeant Hullock.—Answer the question.

A. A meeting, both of the town and county magistrates, was called: immediately the general police of the town was reinforced, and also the county patrole.

Q. Did the measure stop there, or did you take any other steps?

A. Fresh bodies of military were drawn into the town: a proclamation was ordered to be printed and posted up through the whole streets of the city, on Sunday.

Q. Were those steps, to which you have now adverted, taken in consequence of the appearance which the town exhibited on the Monday and the following days?

A. They were.

Cross-examined by Mr Jeffrey.

Q. You have said that you heard a particular part of a hand-bill, or placard, read?

A. I did.

Q. And upon looking at the paper that was handed to you now, you have said that you observed the same passage in that paper?

A. I did.

Q. Can you repeat that passage now from your memory?

A. No.

Q. Could you have repeated that passage from your memory at the time you first read it in the second hand-bill that you saw after you were removed from the place where they were reading the first?

A. I could not.

Q. Then I ask you upon what grounds you are perfectly certain that the passage in the second hand-bill, or that which you saw now, are the same that you originally read?

A. The contents of the passage, I could not have repeated it.

Re-examined by Mr Sergeant Hullock.

Q. You cannot repeat the words of it?

A. I cannot.

Q. But when you saw the words in the other paper, you were quite sure they were the same words as were in the other?

A. I was perfectly certain.

Q. You have not the least doubt of that?

Q. Not the least doubt.

JOHN STIRLING—*sworn.*

Examined by Mr Drummond.

Q. Do you know Mr Hardie, the Justice of the Peace for Lanarkshire?

A. Yes.

Q. The gentleman who has been here to-day?

A. Yes.

Q. Do you remember seeing Mr Hardie in Duke Street, upon the morning of Sunday, the 2d of April last?

A. Yes.

Q. Was he near a watch-box?

A. Yes: he was standing before one.

Q. Were there a number of people before the watch-box?

A. Probably from twenty to thirty individuals.

Q. Did you observe any paper put upon the watch-box?

A. Yes: it was a paper addressed to the inhabitants of Great Britain and Ireland, which a man was reading.

Q. What was it?

A. An Address to the inhabitants of Great Britain and Ireland, signed by order of the committee for the organization of a provisional government.

Q. Did Mr Hardie go forwards to the place where this paper was stuck up?

A. Yes: he went towards it, and endeavoured to take it down; and afterwards, finding it on so hard, he was obliged to take the point of his umbrella to scrape it down.

Q. Did you see Mr Hardie meet with any obstruction or interruption?

A. Yes: a young man started forward and catched him by the breast, or pushed him on the breast, demanding his reasons for taking it down, and what authority he had.

Q. What did Mr Hardie say or do then?

A. He replied, that the paper contained seditious matter, and that he was a magistrate.

Q. Did he say the paper should be taken down?

A. Yes: he said that it ought to be taken down.

Q. Was there any answer made to that?

A. The lad dared him to do so.

Q. The same person yous poke of before?

A. Yes; he dared him to do so, and threatened violence to him.

Q. Do you remember what the lad said?

A. He used such words as "I defy you to take it down," or, "I will not allow you to take it down."

Q. Is that man, of whom you are now speaking, the man whom you saw at this Bar yesterday?

A. Yes.

Q. The man who was tried yesterday?

A. Yes: Andrew Hardie.

Q. Had you occasion to see that man afterwards, about that period?

A. Yes: I saw him, I think, on the Sunday afternoon; I saw him frequently on Monday, and likewise on the Tuesday morning I recollect him.

Q. Where did you see him?

A. At the east end of Rotten Street, Glasgow, the head of Havannah Street, both corners of Duke Street, and in a close near Duke Street.

Q. Was he by himself, or with any body?

A. He was attended, generally, by six or eight individuals.

Q. Did they appear to be idle?

A. They appeared to be doing nothing, except talking.

Q. At this time that you were at the watch-box, was there a person of the name of Anderson there, an Excise officer?

A. Yes.

Q. Do you remember Hardie saying anything to him?

A. He told him he knew his principles well, and that he would mark him.

Q. Did he say that to any other person likewise?

A. He said the same thing to me.

Q. Was it said at the same time to both of you?

A. Mr Hardie went away, and I went after him and returned; and after returning, he used the same expressions to me.

Q. He said he knew your principles, and would mark you?

A. Would mark us afterwards; and that we were the cause of bringing Mr Hardie there for the purpose of pulling down the paper.

Cross-examined by Mr Jeffrey.

Q. You said you saw Hardie idle upon the streets upon the Monday and the Tuesday after?

A. I think I saw him on the Monday: yes, I saw him frequently on the Monday following.

Q. Do you happen to know whether he had any employment at that time, or during the week before?

A. I know nothing of him.

Q. Do you know that for that, and many weeks before, many people had no employment in Glasgow?

A. I have no doubt that that is still the case in Glasgow.

ARCHIBALD BUCHANAN—*sworn.*

Examined by Mr Sergeant Hullock.

Q. You are a change-keeper at some bridge; what bridge is that?

A. Castlecary Bridge.

Q. How far is that from Glasgow?

A. About fourteen miles and a half.

Q. Fourteen miles and a half on the direct road from thence to Glasgow?

A. Yes.

Q. Is your house upon the direct road?

A. Yes.

Q. Do you remember the 5th of April last?

A. Yes.

Q. You remember that morning?

A. Yes.

Q. Had you any company soon that morning at your house?

A. Yes: about half past six o'clock.

Q. A party of men?

A. Yes.

Q. How many in number?

A. According to what they got, about four and twenty.

Q. What sort of men were they? had they any sticks or poles, or any thing of that sort with them?

A. Yes: they had sticks with them—poles—just over their shoulders.

Q. They had perhaps iron at the end of these?

A. Yes.

Q. They had poles over their shoulders, with irons at the end of these poles?

A. Yes.

Q. Did you ever see a pike?

A. No.

Q. Then you are not certain that you saw a pike that day?

A. No: there was iron at the end of them.

Q. Was it like this sort of thing? (*Producing a pike.*)

A. Yes.

Q. Do you think that is one of them?

A. It is like one of them.

Q. The things they had were like that?

A. Yes.

Q. This is what you describe as a pole, with a piece of iron at the end of it?

A. Yes.

Q. Had they all that sort of stick?

A. Some of them had not that.

Q. What had those some—had they guns?

A. They had guns.

Q. Any pistols?

A. Yes: some of them had.

Q. You have seen a sword?

A. Yes.

Q. Had they any swords?

A. One, I think, had a sword.

Q. Did they get any refreshment at your house?

A. Yes: they had a dozen of porter, and a dozen of two-penny loaves.

Q. Were the loaves divided into two?

A. Yes: the loaves were divided into two.

Q. And the porter perhaps also in the same manner?

A. Yes.

Q. Had each man half a bottle of porter and half a two-penny loaf?

A. Yes.

Q. Did they sit in your house, or stand at the door while they took this?

A. Some in the house, and some at the door.

Q. They were not soldiers were they? or how were they dressed?

A. No: they were dressed like trades-people.

Q. You would expect to be paid after it was over?

A. Yes: I got 7s. 6d.

Q. In what way did they offer to pay you at the first?

A. They came and axed the bill, and I gave it off my tongue; I stated it was 8s. and he axed if 7s. 6d. would do, and I said yes.

Q. You first charged 8s.?

A. Yes, the reckoning came to 8s.

Q. What conversation took place about a bill at six months, or something of that sort?

A. They did not offer a bill.

Q. What was said about a bill?

A. I cannot recollect nothing about a bill. They did not offer a bill.

Q. I asked you, what was said about a bill at six months?

A. The man that paid me axed if I would change a note.

Q. What did you say to that?

A. I said, Yes, surely, if the mistress has as much change.

Q. What was done in consequence of that?

A. "Perhaps you will not be very fond of it, for it is payable six months after date."

Q. He tendered you a bill?

A. No, he did not speak about a bill; it was a note.

Q. Did you see the note?

A. No, he never offered the note.

Q. What did you say to that? perhaps, you objected to that?

A. I said, the present time was my time for my merchant.

Q. Did you, in consequence of that, drop your demand from 8s. to 7s. 6d.?

A. Yes, he paid me 7s. 6d.

Q. You demanded 8s.—how was the sixpence taken off?

A. I do not know that.

Q. If you charge 8s., do you always take 7s. 6d. in payment?

A. No, I do not do that.

Q. Did you give any receipt for it now?

A. Yes.

Q. What sort of receipt did you give?

A. A receipt in the same way which he dictated to me to make it out.

Q. Did you write what he dictated?

A. Yes.

Q. Did you, after having so written, give the paper to the man?

A. Yes, to the same man that paid me.

Q. Was he a tall man, or a short man?

A. He was a little man.

Q. You have seen him since, have not you?

A. Yes.

Q. Did you see him yesterday?

A. Yes.

Q. Look if you see him to-day?

A. Yes.

Q. That is the little man standing there?

A. Yes.

Q. His name is Baird?

A. Yes.

Q. Was that the man with whom a conversation took place about the bill at six months, and about the reckoning?

A. Yes.

Q. Tell me if that is the receipt you wrote at his dictation. (*Handing a paper to the witness.*)

A. Yes.

Q Did you attempt to write a receipt for yourself?

A. Yes.

Q. And that did not suit?

A. No.

Q. Read that, will you?

A. Oh, yes. "The party called, and paid for porter and bread, by cash, 7s. 6d."

Q. That is your name to it?

A. Yes.

Q. And you gave that receipt to the prisoner at the bar?

A. The same man that paid me.

Q. You say, some men had these sticks with irons a the end of them, and some guns, and some swords,—what had Mr Baird?

A. He had a gun.

Q. Did he come in first?

A. I could not be particular in that.

Q. Who ordered the refreshment?—the porter and the bread?

A. It was him.

Q. And he paid for it, you say?

A. Yes.

Q. Did any other person interfere about either ordering or paying for these articles?

A. Not that I saw.

Q. You were the only person with whom they dealt, were you not?

A. Yes.

Q. After they had got this refreshment, and paid the money, what became of them?

A. They went out at the end of the room.

Q. Did they stay there?

A. No.

Q. What became of them?

A. I cannot say what road they took, but they did not cross the bridge the same road they came.

Q. Did they go under the bridge?

A. No, they could not go under the bridge?

Q. What bridge is it?

A. Over the Great Canal.

Q. You had not the curiosity to go out to observe what way they took?

A. No.

Q. You say, that you set about writing a receipt for these things?

A. Yes, before that was wrote.

Q. Did you begin to write it out yourself?

A. Yes.

Q. Did you write any words?

A. Yes, a word or two. I said "received from" in the beginning of the receipt.

Q. Then, perhaps, you asked his name?

A. Yes.

Q. Then what did he state?

A. He said, that would not do.

Lord Justice-Clerk.—That was Baird said that?

A. Yes.

Mr Sergeant Hullock.—Upon which he prescribed the terms of the receipt, and you wrote accordingly?

A. Yes.

Q. What did he do with the receipt when he got it?
A. I cannot say.
Q. You were examined yesterday?
A. Yes.
Q. Did you state that you recognized Hardie yesterday?
A. No, I could not say.

JAMES RUSSELL—*sworn.*

Examined by Mr Drummond.

Q. Do you live in Long Croft?
A. Yes.
Q. In the parish of Denny?
A. Yes.
Q. Is that near the public road from Glasgow?
A. Yes.
Q. How near that road?
A. About a gun shot.
Q. Do you recollect, on the morning of the 5th of April, some armed men coming to your house?
A. Yes.
Q. What time in the morning was it?
A. I think it was between seven and nine in the morning.
Q. How many came into the house?
A. There was first one, and I observed another within the door; and I did not see any but them two for a while: and then I see'd, when they went away, another, with a saw on his back.
Q. What did the two who came into the house do?
A. When I heard them coming into the house, as I had two guns in the room in the kitchen, I hid what I thought the best and most dangerous one; and when I returned, I heard the man say, "Here is one." When I came back he had the gun in his hand; and I said, it was my property, that he should not take it. Says he, "Sir, I will give you a receipt."
Q. You saw the other man had your gun in his hand?

A. Yes; and I said, it was my property, that he should not have it;—and he replied, "Oh, sir, I will give you a receipt for it." I refused.

Q. Did he take it without a receipt?

A. Yes.

Q. And carried it away with him?

A. "Ay," says he, "but I will bring it back at night, if you will not take a receipt;"—or, in the evening.

Q. Did you ever see that gun afterwards?

A. Yes, I see'd it in the Castle, and identified it before some of the baillies.

Q. Do you know a place they call Bonnymuir?

A. Yes.

Q. That is no great distance from where you live?

A. It will be about two miles.

Q. It is not in the same parish, I believe?

A. No.

Q. It is in the parish of Falkirk?

A. Yes.

Q. In the county of Stirling, of course?

A. Yes.

Q. See whether your gun is in that box? (*Pointing to a Box on the Table.*)

A. This is the gun. (*Producing it.*)

Mr Sergeant Hullock.—Is that the gun you lost on the morning of the 5th of April last?

A. Yes.

Q. Was it taken down from a part of the kitchen, where it was hanging?

A. Yes.

Q. You are quite sure that that is the gun?

A. Yes.

Q. Taken away by the persons of whom you have been speaking—three or four of them?

A. There were two within the house; and I am not certain whether there were two or one at the door.

Q. They took it away with them?

A. Yes.

THOMAS WRIGHT, Nailer in Camelon,—*sworn.*

Examined by Mr Drummond.

Q. You know the house of Thomas Lushman, change-keeper in Camelon?

A. Yes.

Q. Were you there on the 2d of April last?

A. Yes; it was on a Monday, before the battle of Bonnymuir.

Q. In the evening, was it?

A. Yes.

Q. What time of the evening?

A. About ten o'clock.

Q. Did you go there at that time?

A. Yes.

Q. It was ten o'clock when you went to the house?

A. Yes.

Q. Who was there when you went in?

A. There was Peter M'Lean, James Dunbar, and William Wright.

Q. William Wright, junior, that is?

A. Yes.

Q. Did you sit down there, and stay a while?

A. Yes.

Q. Did William Wright and Dunbar go away after they had been there some time?

A. Yes.

Q. Did any body come in after that?

A. Yes, there were two or three came in after that.

Q. Who came in?

A. James Burt, William Burt, and John M'Millan.

Q. Any body else?

A. John Baird, and some others with him.

Q. Do you see that man here to-day?

A. Yes.

Q. Is that the man? (*Baird.*)

A. Yes.

Q. Is that the man who came into that house of Lushman that night, with some others with him?

A. Yes.

Q. Andrew Burt, junior, came in?

A. Yes.

Q. Did he bring any thing with him when he came in?

A. Yes, some of those weapons they call pikes.

Q. How did he carry the pikes?

A. He took them out under his clothes.

Q. He had them under his clothes?

A. Yes.

Q. And took them out from under his clothes?

A. Yes.

Q. How did he take them out?

A. He had his apron on as he came from his work, and he had them under his apron.

Q. Were they wrapped up in his apron?

A. No; he had them under his apron.

Q. And that is what you mean by their being under his clothes?

A. Yes.

Q. It was the iron heads of pikes you mean?

A. Yes.

Q. Pike heads we will call them?

A. Yes.

Q. What did he do with these when he brought them in?

A. He gave them to this man, John Baird, and those other men who were with him.

Q. That is to say, who were with Baird?

A. Yes.

Q. How many might there be altogether?

A. I saw two of them, but he said there were thirteen.

Q. Who said there were thirteen?

A. Andrew Burt.

Q. Baird was present at this time?

A. Yes.

Q. What was done with the two?

A. He put them with the rest of them.

Q. Where did he put them?

A. In a bag.

Q. Who put them into a bag?

A. I suppose it was Andrew Burt.

Q. In the house of Lushman, in this same room where Baird was?

A. Yes.

Q. What was done with them after they were put in the bag?

A. John Baird, and the rest of the men, carried them off.

Q. Was there any money paid, or to be paid, for them?

A. Yes, they paid for them.

Q. At that time?

A. Yes.

Q. Who received the payment?

A. Burt.

Q. And who paid?

A. Baird.

Q. Do you know what he paid?

A. I do not know the sum, but it was some shillings.

Q. What is the price of a pike?

A. I could not tell you.

Q. Were they to meet any where afterwards?

A. Yes: I heard them say they were to meet upon the Canal Bank next night.

Q. Who were to meet?

A. The same ones that were there.

Q. Who were they to meet?

A. I could not say.

Lord Justice Clerk.—Who stated this?

A. I cannot say which stated it, but it was agreed among them.

Q. That Baird and the men with him were to meet who on the canal bridge?

A. The people who gave him the pikes.

Mr Drummond.—What part of the canal bank were they to meet at?

A. They did not mention the part.

Q. Was it in the neighbourhood, or at a great distance?

A. It would be at the canal bank, between their place and Camelon.

Q. Between which place and Camelon?

A. Between Condorret and Camelon.

Q. Condorret is the place where Baird and the others came from?

A. Yes.

Q. What time in the next day were they to meet?

A. They did not mention, but it was next night.

Q. That was all that was said about the hour, was it?

A. Yes.

Q. Were they to have pikes with them when they met there?

A. I did not hear that mentioned.

Q. What were they to do there?

A. I cannot say—that was all that I heard mentioned.

Q. Though you cannot say who the person was who stated first of all what was said about this meeting, you may remember the expression?

A. No: I do not remember it.

Q. Can you repeat what was said?

A. I heard them say they were to meet next day—but who it was I cannot say.

Lord Justice Clerk.—Was it before or after the pikes were delivered to Baird that this was said about meeting the next night?

A. It was after it I believe.

Q. Did you observe who carried out the bag?

A. It was one man that was with John Baird, but I do not know his name.

WILLIAM WRIGHT, Jun. present Prisoner in the Castle of Stirling—*sworn.*

Examined by Mr Hope.

Q. Where do you live?

A. In Camelon.

Q. Were you there in the beginning of April last?

A. Yes.

Q. Is there a person of the name of Lushman lives in that village—Robert Lushman?

A. Yes.

Q. Is it a public house, or what is it?

A. Yes.

Q. Do you recollect hearing of a battle at Bonnymuir, about that time?

A. Yes.

Q. What day of the week did you hear that that happened on?

A. On Wednesday.

Q. Were you in Camelon the Monday before that?

A. Yes: I was in Camelon from two o'clock that day.

Q. Were you in Lushman's house that night?

A. Yes.

Q. About what hour?

A. I could not really say—it was between the hours of seven o'clock and ten.

Q. Did you see a person of the name of Thomas Wright there?

A. Yes.

Q. He is your brother?

A. My cousin and my brother was there too.

Q. What is your brother's name?

A. Thomas Wright.

Q. There were two persons of the name of Thomas Wright there?

A. Yes.

Q. Who did you find in Lushman's house when you went in there?

A. I went into the kitchen; and I was going through to a Nailors' Society—I am a member of the Nailors' Friendly Society, and I was ordered to go down to the back room; and when I went there, there was John Baird and one Rogers, and other two men I did not know.

Q. What Rogers?

A. Rogers from Airdrie.

Q. William Rogers.

A. I could not say his first name, but he had a rare big red nose.

Q. Look at that man with the grey coat and white waistcoat; is that the man you meant by John Baird?

A. Yes it is.

Q. Did any body else come into the room after this?

A. Yes; several.

Q. Name them.

A. There was one James Burt came in at the time I was there.

Q. Did any body else come into the room?

A. Andrew Davidson.

Q. Any other person of the name of Burt?

A. No: I could not really say—there was one Burt there before that I went in.

Q. Do you know what his name was?

A. Andrew Burt.

Q. Andrew Burt, junior or senior?

A. Junior, I think—I do not know, there are so many Andrew Burts; it is old Andrew Burt's son.

Q. After you went in did you hear any conversation, or see anything pass between Baird and Andrew Burt?

A. I did not see anything between Andrew Burt and Baird, because Andrew Burt was there before I went in; I saw James Burt come in with some pike heads.

Q. What followed then?

A. He put them into the bed.

Q. A bed in the room?

A. Yes.

Q. Did they remain there? or what was done with them?

A. I could not say—I left them; the pikes were laid on the bed, and the coverlid was laid upon them, and I was sitting on the side of the bed, and they lifted up the cover of the bed and looked at them, and I think there were about a dozen.

Q. Do you mean pike heads?

A. Yes.

Q. Iron things?

A. Yes.

Q. Like these? (*Producing a pike head.*)

A. Yes.

Q. What became of those pike heads?

A. I could not really say—I saw them in the bed, and they were left on the bed when I went out of the room.

Q. Did you hear any conversation about these pikes when Baird was present?

A. No: Rogers's conversation was about the propriety of giving over tea.

Q. How did James Burt bring them in?

A. Under his apron.

Q. Were they shewn to any person in the room?

A. No: they were put into the bed.

Q. Did you see Baird pay any money to Andrew Burt, or to James Burt? or did you hear any conversation about such payment?

A. No, I did not.

Q. Did you hear any thing said about these persons meeting again?

A. No: I did not hear at that time—I was a very short time in the room.

Q. When did you hear that they were to meet again?

A. The men that were in the room?

Q. Yes.

A. I did not hear them say that they were to meet again, only Daniel Turner came in.

ALEXANDER ROBERTSON—*sworn.*

Examined by Mr Sergeant Hullock.

Q. Where do you live?

A. At Dam-head.

Q. In the parish of Falkirk?

A. Yes.

Q. Do you remember a skirmish or a fight taking place in your neighbourhood on the 5th of April?

A. Yes.

Q. You saw it, did you not?

A. Yes.

Q. Did you see any part of the people who were at the battle early in the morning, pass your house?

A. Yes.

Q. About what hour in the morning did you see them?

A. I think it might be about eight o'clock.

Q. Was that the first time you looked out that morning?

A. Yes: they were going along the north bank of the canal.

Q. Is your house situate on the road?

A. No, on the south side of the canal.

Q. How far is your house from the road upon which you saw those persons?

A. It might be about four hundred yards.

Q. When you looked out first, what number of persons did you see marching, or going along that road, I should say?

A. I thought there were in number about four and thirty.

Q. Were they going in regular order, or in a crowd?

A. They were going in step, two men deep.

Q. Had they any description of arms with them that you could perceive?

A. They had long sticks over their shoulders, in a slanting direction.

Q. Had these sticks any thing at the end of them?

A. Yes: there appeared to be some instrument on the end of it sharp.

Q. Did the sun shine that morning?

A. Yes.

Q. Did they glitter?

A. Yes.

Q. You have seen bayonets on a march?

A. Yes.

Q. Did they resemble them?

A. Something of a resemblance.

Q. I mean in glittering?

A. Yes.

Q. Had any of them guns?

A. Most of them pikes.

Q. Had any of them muskets?

A. Yes.

Q. How many?

A. I could not say the number.

Q. Did you see where they went?

A. They went out of my sight, to the eastward.

Q. Did you afterwards see those persons again?

A. I think about an hour afterwards I saw them again: they were the same in number; I could not say whether they were the same again.

Q. Where did you see them?

A. They came through the aqueduct, and were going along the drove road towards Bonnymuir.

Q. Did you see them go up towards the muir?

A. Yes.

Q. Did you see them stop upon the muir at any place?

A. They went up to the top of the muir and halted there, part sitting and part standing.

Q. How long did they remain in that position?

A. I think I might stand and look at them perhaps half an hour.

Q. What took place then?

A. I was returning homeward, going to take my breakfast, when going over a hill, I cast my eye to the highway, and I saw a party of horse coming at full speed.

Q. On the highway?

A. Yes.

Q. Did that party of horse finally go upon the muir, and come in contact with these men?

A. Yes: the same way that they went up, and an engagement took place.

Q. Which you saw?

A. Yes.

Q. Was there any firing between these persons?

A. Yes: when they came up nigh hand with them, between a hundred and eighty yards, the men came down the

muir and placed themselves at the back of a dyke, and commenced firing at them in an irregular manner.

Q. Did that firing take place before any firing had occurred on the part of the soldiery?

A. Oh yes: they were the first that fired.

JAMES MURRAY—*sworn.*

Examined by Mr Drummond.

Q. You are the armourer of Stirling Castle?

A. Yes.

Q. Do you remember getting some guns and pikes in the month of April last?

A. Yes.

Q. And they were in your custody from that time to yesterday?

A. Yes.

Q. Look at those.—(*The witness examined the arms.*)

A. These are the arms that were received in the stores.

Q. You swear that they are the same arms that were delivered into your custody by Mr Davidson and the other gentlemen who brought them there?

A. Yes.

Q. And you kept the key of the place where they were all the time till yesterday?

A. Yes, all the time.

ALEXANDER KER, Clerk to Robert Sconce, writer in Stirling—*sworn.*

Examined by Mr Drummond.

Q. Look at that declaration; were you present when that declaration was emitted by the prisoner at the bar before Mr Dow?

A. Yes.

Q. What is its date?

A. Dated at Stirling Castle, the 7th of April, 1820.

Q. Was it written by yourself?

A. Yes.

Q. Was it freely and voluntarily emitted by the prisoner, when he was in sound mind, and in his sober senses?

A. It was.

Q. Here is a receipt—(*Handing a paper to the witness.*)—you see the memorandums on the back of that receipt?

A. Yes.

Q. Is that the receipt referred to in the declaration?

A. Yes.

Q. Who produced it?

A. The prisoner, Baird.

Q. In short, this is the receipt referred to in the declaration?

A. Yes.

ADAM DUFF, ESQ. Advocate, Sheriff-depute of Edinburgh, *sworn.*

Examined by Mr Drummond.

Q. Read the date of that declaration—(*Handing a paper to the witness.*)

A. At Edinburgh; and within the house of the governor of the Jail there.

Q. That declaration was freely and voluntarily emitted by the prisoner, when he was of sound mind, and in his sober senses?

A. It was freely and voluntarily, when he was in his sober senses.

JOHN WATKINS—*sworn.*

Examined by Mr Drummond.

Q. Were you present when that declaration was emitted by the prisoner?—(*The declaration shewn to the last witness.*)

A. I was.

Q. It was emitted by him freely and voluntarily?

A. Yes.

Mr Sergeant Hullock.—I propose now to read that address. I propose to read the single paragraph which you yesterday conceded might be read. If that is the law today, I am satisfied with that; if not, I must offer the whole.

Mr Jeffrey.—Call Mr Dow, and I will consider of it.

ALEXANDER DOW—*sworn.*

Examined by Mr Drummond.

Q. Was that declaration emitted in your presence, by the prisoner at the bar?

A. Yes.

Q. Freely and voluntarily, and in his sober senses?

A. Yes.

Q. Is that the document referred to in the declaration?

A. Yes.

Mr Sergeant Hullock.—I propose, now, that the whole should be read; but I will read the declaration first.

[*The following Declarations were read.*]

AT STIRLING CASTLE, 7th April, 1820.

IN presence of Alexander Dow, Esquire, one of the Sheriff-substitutes of Stirlingshire, compeared John Baird,

present prisoner in the Castle of Stirling; to whom a petition of Robert Sconce, Writer in Stirling, Procurator-Fiscal of Court for the public interest, with the Sheriff-substitute's warrant thereon, was read over. And the said John Baird being examined thereon, declares, That he believes the facts set forth in said petition are true. Declares, That he resides at Condorrat, and is a weaver there: That he left it the same morning he was apprehended, about four o'clock: That a man came, the beginning of that night, from Glasgow, and said there was a party coming up from Glasgow, who were to clear the town from one end to the other, and those who would not go voluntarily should be forced: That the declarant did not know this man previously: That the party came up, accordingly, near four o'clock: That the declarant went eastwards with them, towards Cumbernauld: That the said man who brought the notice of the party coming up, remained at Condorrat till they came, and then went forward with the party and the declarant a short space, after which he went on before them, and other two with him: That of these two, one came up along with the party, and the other came up by himself after the party, and declared he commanded the whole; and this person took the command from the man who had it, and gave it to the declarant: That the declarant took the command, accordingly, of the first division of the party, and this person who gave up the command got the command of the second division; but the declarant had never seen this person before, nor the man who commanded the whole: That the man who commanded the second division was dressed in a long blue coat, and, he thinks, metal buttons and trowsers: That he was about five feet nine or ten inches in height: That he was neither very fair nor very dark in the complexion, but something between the two: That he was a pretty stout man: That the man who commanded the whole was dressed in a short blue coat and grey trowsers, of a fair complexion, and a stout little man. Declares, That there was no reason given for taking the command of the division from the man who had it before: That the declarant does not think either of those individuals could

have known the declarant before: That they gave no account of the purpose of assembling the party, but said that they were to go on before; and said that they were to come back, and meet the party. Declares, That when they left Condorrat, most of the party had pikes, but some had pistols, some firelocks, and some had sticks: That both divisions together amounted to between twenty and thirty men: That the declarant carried a firelock: That the party proceeded along the road to Castlecary bridge, where they stopped and had a refreshment. Declares, and produces a receipt for the bill, which is docqueted, and marked as relative hereto, by the judge-examinator and the declarant. Declares, That he paid the bill out of his own pocket, as few of them seemed to have money: That they then proceeded eastward, till within two miles, or thereby, of Falkirk, where they met the two commanders, who had gone on before, coming back: That these men ordered the declarant and the party to return westward: That they went, accordingly, to Bonnybridge, through the arch, and towards the muir: That they went a mile, or a mile and a half up the muir, where they were to remain till the commanders came; but they never saw the commanders more: That they had orders from the commanders to stand out, if they were attacked by any military force. Declares, That they were attacked by a party of the Hussars and Yeomanry cavalry, and they resisted accordingly: That it was upon the muir they were attacked: That it was an open place, but there was a dyke near it; and they were a little space from the dyke when they were attacked: That the attack commenced by the cavalry coming up and firing pistols at them: That the officer commanding the Hussars wished to stop them, and it was against his orders that they fired. Declares, That when they first saw the Hussars, the declarant and his party were resting on the ground: That they got up before they were attacked; but they were in no order, but like a mob. Declares, That he did not fire the gun at all which he held in his hand. Interrogated, whether the declarant gave any orders to his party when he saw the Hussars coming up, by commanding them to start up and stand to their arms, or

otherways? Declares, That he had no orders to give, as they were waiting for the commanding officers; and declares, That he gave no orders. Interrogated, whether he did any thing to encourage the men to resist the Hussars? Declares, That they all took off their hats and hurraed, and the declarant did so, along with the rest. Declares, That before the engagement was done, they got to the dyke, and some part of it passed at the dyke. Declares, That the horses came over the dyke. Declares, That when the engagement began, the Hussars and his party were on opposite sides of the dyke, and the first part of it took place before the Hussars crossed the dyke. Declares, That the officer waved his sword, and called upon the declarant and his party to give in. Declares, That none of the party, to the declarant's knowledge, were in any houses, other than those already mentioned, previous to the engagement. Declares, That he did not send any of the party to a farm-house, or any house or place, in search of arms. Declares, That they met with no gentleman by the way, or any other person with whom the declarant had any communication, except as above mentioned: That he rather thinks there were some shots fired by his party, but the declarant is not certain. Interrogated, what purpose the declarant and his party had in view? Declares, That, according to the mode in which reformers proceed, no purpose was mentioned: That the declarant's intention was to obey the orders he received, and, if he had asked what the purpose was, he would have received no answer. Declares, That the purpose was connected with reform: That it was a radical reform in the Commons House of Parliament; and the declarant believes this to have been the understanding of the party: That he believes there was something of annual parliaments in it. Declares, That reform was the general purpose they had in view, but the declarant did not know the particular measures which were to be accomplished at that particular time, in furtherance of the said general purpose. Declares, That the declarant was a private in the 95th regiment, for seven years; and was discharged about two or three years ago, upon his own requisition, when he had served out his time. Declares, That

during all the rest of the day, when the other commanders were absent, he considered himself as continuing in the command of the division which he assumed the command of, as above mentioned; but that he did not consider that he had received any orders or plan of movement. Declares, That they all resisted, as a mob, but upon no particular plan; and the declarant resisted along with the rest, but gave no orders. Declares, That there was nothing said about forming a square, which it is impossible to do with eighteen men. And all this he declares to be truth. In witness whereof, this declaration, consisting of this and the ten preceding pages, having been read over to the declarant, is admitted by him to have been freely emitted, and fairly taken down. And the same is subscribed by the declarant and Sheriff-substitute, before these witnesses: Thomas Graham Stirling, Esquire, of Airth; and Alexander Ker, Clerk to the said Robert Sconce, and writer hereof.

(Signed) JOHN BAIRD.
ALEXR. DOW.

(Signed) THOMAS GRAHAM STIRLING, Witness.
ALEXANDER KER, Witness.

AT EDINBURGH, and within the house of the Governor of the Jail there, the 11th day of April, 1821.

IN presence of Adam Duff, Esquire, Sheriff-depute of the shire of Edinburgh, compeared John Baird, present prisoner in the jail of Edinburgh; and the declaration emitted by him at Stirling Castle, on the 7th of April current, with the petition therein referred to, being read over, he declares and adheres to the said declaration, which is subscribed by the declarant and Sheriff, as relative hereto, of this date. And being farther examined and interrogated, declares, That the man who was mentioned in his former declaration, as commanding the second division, is one of those men who were taken prisoners. Declares, that when they came to the bridge at Castlecary, they were separated into two divisions, the one party proceeding along the road towards Camelon, and

the other in the same direction by the canal, in order that they might not miss the two commanding officers, who had gone eastwards, and were to return to give directions to the party; but the party did not know whether the commanders were to return by the canal, or by the road. Declares, that he had the charge of the party which went by the bank of the canal; and the man, who had charge of the second division, commanded the party which went by the road. Declares, That the whole party at Castlecary bridge consisted of twenty-four men; but the declarant does not know how many were in the division which went with him by the bank of the canal, or how many went by the road. Declares, That, in the fight between his party and the Hussars, the declarant did not fire a gun which was in his hand, nor did he fire a pistol, nor did the officer commanding the cavalry fire at the declarant. And the prisoner Andrew Hardie being brought into the room, the declarant declares, That he is like the person who was mentioned as commanding the second division; but the declarant could not swear that he is the person. Declares, That, if this commander is a prisoner, that Hardie is the man. And being shewn a printed paper, entitled, "Address to the Inhabitants of Great Britain and Ireland," dated Glasgow, 1st April, 1820, declares, that he saw a similar Address posted on the toll-bar at Condorret, at eleven o'clock on the forenoon of Sunday, the 2d current; but he does not know by whom the Address was printed, or posted up on the toll-bar. And the said paper is marked by the declarant and Sheriff as relative hereto. All which he declares to be truth.

JOHN BAIRD.
ADAM DUFF.

Mr Jeffrey.—Now, my Lord, I must object to that paper, (the printed Address,) which I understand is tendered in whole as evidence to the Jury. I object to that paper, or any part of that paper, being sent to the Jury as evidence; and, my Lord, if the objections, which I am now to state, are the same, or nearly the same, with those formerly stated, I trust, after the observation that fell a little while ago from

arisedelusively in such circumstances, is to be taken in evidence, upon which a person is to have a document produced against him, from a little variation in which, his life and his highest interests may be put in hazard? We all know how easy it is to mix up the defective recollections and impressions of the memory, either with the suggestions of imagination or the presentiments of present sense, and how apt, where a figure is imperfect in the memory, any thing skilfully adapted to fall in with the outlines that remain, is to pass for a revival of the original; and that is the way a number of stories lose their main features without any purpose of falsification on the part of those who tell them. An anecdote in one fable is transferred to another; and persons tell stories with borrowed circumstances, and believe them, just by that operation which might have been the foundation of Mr Hardie's opinion to-day. That is so consistent with human experience as to require no illustration on my part. That which Mr Hardie states as the ground of a perfect assurance or belief, is now endeavoured to be put on your Lordship as evidence of a fact, that two things were identical, when he admits he had not the means of *knowing* whether they were so, but had received, in aid of his memory, a suggestion of a similar nature, from the exhibition of another document altogether. Is that safe or legal evidence? I submit that it is not; and that being the fact, if the decision were not worthy of reconsideration upon other grounds, I submit to your Lordship, that what I have stated is more than sufficient to induce you to alter that determination.

But supposing the evidence were good as to the identical tenor of the passage so read, so remembered, and so forgotten, I ask your Lordship, where is the evidence, or where are the grounds, for that opinion expressed by the witness, as to the identity of all the rest of that paper? A very good opinion it may be to guide a man in ordinary life; but, when a man comes to state it on oath, it is not to be tolerated in a court of law. Where is the evidence that the rest of that paper was compared? He read on the top of the paper the word "Address." He could not recollect that before it was put into his hands; that is the state of his memory to

which we are to trust,—he does not recollect the top. I believe he has a recollection of All-Fools' day being the first of April;—he knows the date, and he forms his associations accordingly. Besides, he has not said he read another line of that paper, by which alone he is to connect my client with Hardie. He does not say that he read, or heard read, or paid the least attention to a single word in the original paper, except the paragraph I have spoken to; and yet on no better evidence than the mere presumption, that because a part appeared to be the same, he takes upon himself to say, that he firmly believes, and has no doubt, that they are wholly the same. I suppose there was also some general resemblance in the form of the paper, and the size of printing, or something of that kind. The whole of this document is now offered in evidence. But is that an identification of one document with another, to entitle you to produce the second as evidence of the contents of the first? I submit it manifestly is not: but unless it be so taken, you cannot put the second document in evidence at all, because with that neither the prisoner at the bar, nor Hardie, have had any connection.

I humbly submit, therefore, that this is a point entitled to the most serious consideration. This person saw several —a hundred of these bills; but, he says, he never did read this bill since he took it home, and, therefore, he took an impression very safe to guide a man, and perhaps even a magistrate, but affording, as everybody knows, no ground to supply the want of the original document by proof of a copy of it. There is no evidence to prove it is a copy; and with regard to comparison, there is not the least ground to say the party ever saw or examined the original paper. On these grounds, I submit, the production of this paper would be a most dangerous innovation on the law of evidence; and when you consider this is not a document with which the prisoner is directly concerned, and that even Hardie's concern with it, arising chiefly from a personal squabble with Mr Hardie the magistrate, is so remote, that to receive evidence of this kind, merely in order to draw some additional shade of suspicion, and to implicate a person with the contents of a document which he is not proved to have seen, is

resting a case of extreme hardship and peril on the least substantial grounds I ever saw. Therefore, I submit, the production of this paper is not only extremely hazardous to the prisoner at the bar, but would be an irregularity in the conduct of the proof to which your Lordships will not readily give your sanction.

Mr Sergeant Hullock.—My Lord, nothing new has been added to-day in support of the objection; I can add nothing new upon it. The Court decided yesterday in my favour; and I trust the Court will, on the same principle, decide in my favour to-day.

Lord Chief Baron Shepherd.—I believe the Court are agreed in opinion, that this paper is admissible in evidence. The question of the effect of the paper is another question. That which we are now called on to decide is, whether it is admissible against the prisoner at the bar.

Now, in the first place, with respect to one part of the paper, namely, that sentence which one of the witnesses has sworn, this morning, to be a copy, or rather, in other words, to contain the same words,—there is no magic in the term copy,—it is not necessary that the person should have copied it himself; it is enough that he is able to swear, that that which he calls a copy has the same sentence as that which is called the original. Now, as far as relates to that which the witness calls a copy of what he heard read from the watch-box, and in the reading of which, as I understand him, he was able to check the man, and to see he read right, he knows, as he has sworn, what were the words contained in that paper; and he says, that, as far as relates to that sentence, this paper contains the same words as that sentence, which he heard a man read, and which he saw him read on the watch-box. It would, therefore, as far as relates to that sentence, be as good a copy of that sentence, as if he had had time to have deliberately copied it with his own hand, and had produced it in his own hand-writing.

But the Court are of opinion, that the whole paper itself is admissible evidence under the circumstances; and, I confess, I should think this paper would be admissible evidence under the circumstances of its being taken down from the wall on which it was stuck, if there had been no other

paper upon the watch-box,—not in the outset of the cause, certainly,—not without a great deal of the evidence that has been given. But it has been proved, that a body of men, on a certain day, were in arms at a certain place; that they were, to use the language of the law, assembled *more guerrino*, in a warlike manner; that they acted in a warlike manner; for, when they were desired to lay down their arms, they attacked those who came under legal authority to desire them to do it; they themselves not being able to suggest any legal authority for their being assembled in arms against the King's peace. Now, when men are assembled in arms in that way, and conduct themselves in a warlike manner, it appears to me, that if any papers or proclamations have been stuck up which have a tendency towards the same object,—(the Court must decide, whether there is such a connection between the two as to enable it to go the Jury,)—the question is, whether it is admissible evidence of the kind; and whether, under the circumstances of the case, there is not matter sufficiently apparent to shew that connection? Whether men being assembled in arms, and such a paper having been placarded in the neighbourhood, and about the place, and about the time, where they are so assembled, with this, also, in this particular case, that one of the persons who was assembled in arms, (though it is not proved he ever saw this individual paper,) was still, on that important day when it was found placarded, found within a few yards of where this was taken down, (I speak of Hardie,) in connection with other persons, such paper is not admissible evidence? If such a paper is not evidence, other evidence admitted is not evidence; I mean, evidence of the state of Glasgow at the time, or a little previous to the time, of this transaction. This is not merely offered in evidence as a paper, but it is offered in evidence as part of the transaction, as part of the *res gesta*;—there is a warlike assembly, illegally collected together, immediately afterwards. Mr Jeffrey put it, whether it might be produced if it had been published two years before. It might, under circumstances; but there it might strike the mind, that one thing could have no connection with the other. But where there is a tumultuous assembly, and

there are in the neighbourhood proclamations, or addresses, or matters of that sort stuck up, I apprehend the contents of those papers are evidence, and, if one of them is taken down, that paper may be produced; and I should also, I confess, be of opinion, that, being stuck on the wall, the paper need not be produced, but that if any man could give the contents of it, would be sufficient. There may be a copy taken by the witness himself; if that has not been done, then a verbal account may be given of it. If that were not so, consider what the consequence might be. The cases I am about to put make no weight against the prisoner, they are only to elucidate the principle of law. Now, let us put the case of hostile invasion by a foreign army, and that proclamations were put up by that army, inviting the King's subjects to join it, and a body of subjects were to be met, armed and arrayed in a warlike manner, under no legal authority at all, and proceeding in the contest with those who had, I think nobody could say it might not be proved, first, that the enemy had landed; and, secondly, that they had stuck up proclamations, though you did not shew any one of those individuals had seen it. Now, suppose a case of insurrection and rebellion,—and I will put the case of the insurrection that happened some years ago in 1746,—suppose that any body of men in arms had been met by the King's forces after the Pretender had landed and published his proclamations, either marching to Derby, or marching from Derby; without your being able to prove that they saw the proclamations; it might be proved that he went through the county proclaiming himself. The question, therefore, is, is it so far connected with the acts and transactions of the parties that it makes a part of the whole general transaction. If it is, I apprehend it is clearly admissible evidence; and I, therefore, am of opinion, that the particular sentence which that person has proved to be a copy, and to have the same words, —to be a fac-simile in terms as far as evidence goes,—(he swears, "I heard that sentence so read, and I saw it while it was read;" and I am sure this is the same,)—is quite satisfactorily proved. The Court are of opinion, that with respect to that part of the evidence, and with respect to the whole placard, accompanied by the appearance of Glasgow

after that, followed up by the rising of these persons on the Wednesday afterwards, assembled, indeed, in a warlike manner, from the terms used by the examination of the prisoner, who speaks of a commanding officer, and a command being delegated to him, and his being to obey commands he might receive, which is proving an armed assembly contrary to law. It is admissible evidence.

Mr Jeffrey.—Upon the grounds now stated by the Court, I am satisfied that the paper is admissible; and, to the extent of the very luminous opinion now given, I never should have objected to its being produced.

[*The Address was read as follows.*]

ADDRESS TO THE INHABITANTS OF GREAT BRITAIN AND IRELAND.

Friends and Countrymen,—Roused from that torpid state in which we have been sunk for so many years, we are at length compelled, from the extremity of our sufferings, and the contempt heaped upon our petitions for redress, to assert our rights at the hazard of our lives, and proclaim to the world the real motives which (if not misrepresented by designing men, who have united all ranks,) have reduced us to take up arms for the redress of our common grievances. The numerous public meetings held throughout the country has demonstrated to you that the interest of all classes are the same: That the protection of the life and property of the rich man is the interest of the poor man; and in return, it is the interest of the rich to protect the poor from the iron grasp of despotism: for when its victims are exhausted in the lower circles, there is no assurance but that its ravages will be continued in the upper; for once set in motion, it will continue to move, till a succession of victims fall. Our principles are few, and founded on the basis of our constitution; which were purchased with the dearest blood of our ancestors; and which we swear to transmit to posterity unsullied, or perish in the attempt. Equality of rights (not of property) is the object for which we contend,

and which we consider as the only security for our liberties and lives. Let us shew to the world that we are not that lawless sanguinary rabble, which our oppressors would persuade the higher circles we are; but a brave and generous people, determined to be free. "Liberty or Death" is our motto; and we have sworn to return home in triumph, or return no more. Soldiers! shall you, countrymen, bound by the sacred obligation of an oath, to defend your country and your king from enemies, whether foreign or domestic, plunge your bayonets into the bosoms of fathers and brothers; and at once sacrifice, at the shrine of military despotism, to the unrelenting orders of a cruel faction, those feelings which you hold in common with the rest of mankind? Soldiers! turn your eyes toward Spain, and there behold the happy effects resulting from the union of soldiers and citizens! Look to that quarter, and there behold the yoke of hated despotism broke by the unanimous wish of the people and the soldiery, happily accomplished without bloodshed! And shall you, who taught those soldiers to fight the battles of liberty, refuse to fight those of your own country? Forbid it, heaven! Come forward, then, at once, and free your country and your king from the power of those that have held them too too long in thraldom. Friends and Countrymen! the eventful period has now arrived, where the services of all will be required, for the forwarding of an object so universally wished, and so absolutely necessary. Come forward, then, and assist those who have begun, in the completion of so arduous a task; and support the laudable efforts which we are about to make, to replace to Britons those rights, consecrated to them by Magna Charta and the Bill of Rights, and sweep from our shores that corruption which has degraded us below the dignity of man, owing to the misrepresentations which have gone abroad with regard to our intentions. We think it indispensably necessary to declare inviolable all public and private property; and we hereby call upon all Justices of the Peace, and all others, to suppress pillage and plunder of every description, and to endeavour to secure those guilty of such offences, that they may receive that punishment which such violation of justice demands. In the present state of affairs, and during the continuation of

so momentous a struggle; we earnestly request for all to desist from their labour, from and after this day, the first of April, and attend wholly to the recovery of their rights, and consider it as the duty of every man not to recommence until he is in possession of those rights which distinguishes the freeman from the slave, viz. that of giving consent to the laws by which he is to be governed. We therefore recommend to the proprietors of public works, and all others, to stop the one and shut up the other, until order is restored, as we will be accountable for no damages which may be sustained, and which, after this public intimation, they can have no claim to. And we hereby give notice to all those who shall be found carrying arms against those who intend to regenerate their country, and to restore its inhabitants to their native dignity, we shall consider them as traitors to their country, and enemies to their king, and treat them as such. By order of the Committee for Organization, for forming a Provisional Government—Glasgow, 1st April, 1820. Britons! God, justice, the wishes of all good men, are with us! Join together, and make it one cause, and the nations of the earth shall hail the day when the standard of liberty shall be raised on its native soil!

The Lord Advocate.—My Lord, we here close the evidence on the part of the crown.

Mr Jeffrey.—May it please your Lordship, and you, Gentlemen of the Jury,—After a great deal of time spent in debates about evidence, which it is very probable you have not entirely understood, and a great deal more spent in the details of evidence, the bearing of which upon the case, I, for one, profess I am little able to understand; we have, at last, come to a stage of the proceedings in which I trust that no room for misunderstanding will be left: For, unless I very grievously misapprehend the nature of the case which you are now to try, it resolves itself, and is now come to as simple and plain a point of evidence, and reasonable construction of evidence, and to a matter of as easy and simple definition, as any case that any of you ever, as jurymen, under that law which is the ornament of Scotland as to other crimes, tried, or were witness to seeing tried.

And, Gentlemen, before I proceed to state, in a word, to you, what I take this question and this case to be, it may not be amiss that I should state to you what most unquestionably it is not. Gentlemen, then, in the first place, it is not a question whether the prisoner at the bar is clearly a guilty or an innocent person; it is not a question whether the evidence laid before you this day has or has not convicted him, to your satisfaction, of great and aggravated and multiplied capital offences. Upon these questions I might begin by conceding to you, the affirmative which is maintained, or might be maintained, on the part of the prosecution; and yet look with unabated confidence for a verdict of acquittal at your hands, from the only charge with which he, or I, or you, have this night to do. That charge, Gentlemen, is, Whether the evidence is complete and satisfactory, of his having committed the crime of High Treason; and still more narrowly, whether he has committed those particular Treasons, and had proved against him those special overt acts, by which, in the indictment before you, it is affirmed that he has contracted the guilt of High Treason. To this limited and precise issue, it must be admitted on all hands, that the question was reduced when it came into court; and that every thing that does not go to satisfy you upon that point, ought to be discarded from your minds, as referable to a question and a case which neither is, nor can be before you.

But, Gentlemen, I believe I may proceed, and state, that with regard to by far the greater part of the Treasons that are actually charged, you have as little to do with them as with the other felonies, or other crimes, of which evidence may have been laid before you; because, as to the question of any attack or any design of injury to the person of the Sovereign, or any of those more questionable and less laudable Treasons, that have, by a constructive interpretation of the original statute, been ruled in other cases, and in other courts, fortunately for us all, we have nothing to do with them here. How far the taking up and following out designs for general alterations, not touching matters of state, or the government and laws, at least the laws generally, have, or have not been rightly held to be Treasons in other places,—is a question which I, for one, might say, I should consider as open to argument; but which, I say, is clearly not in ques-

tion here: and, therefore, it would be very idle and unpardonable in me to detain you with any discussions that relate to that. I may only observe, however, that the learned person who opened the case to you on the part of the Crown, was guilty, in my apprehension, of an error, in stating to you that the law, even by those decisions to which I have referred, and I say there is no warrant for them by the statute—that the law is, that conspiring to levy war, in all cases where war may be levied, is, independently of the substantive definition of Treason—is, independently of a late definition by an act of the late King—is, and was always an overt act to prove Treason under the original statute. I do not mean to deny, that there are decisions going that length, as to certain Treasons; but it is a mistake to apply it generally. And I say, that with regard to conspiracy to levy war, to effect alterations not touching government or the state, that such conspiracy neither is, nor ever was, an overt act of Treason, by compassing and imagining the King's death. It has been held, indeed, that *actually levying war*, for the purpose of throwing down all inclosures, or for the purpose of throwing down all dissenting meeting-houses, or for the purpose of throwing down all brothels, is Treason, within the clause of levying war; but conspiring to levy war for that purpose, never was held to be an act of compassing the King's death. Therefore, I conceive it was stated far too broadly, when it was stated to that effect. I think, however, that all this is not material to the present question; because, undoubtedly, the substantive charge against the prisoner is exhausted, by considering it as a charge of conspiracy to levy war, to compel the Sovereign to change his measures, or an actual levying of war, which is a treason under the original statute of King Edward. And, therefore, Gentlemen, the question comes to be, Whether the prisoner at the bar has been proved by sufficient evidence to have either conspired to levy war, or actually to have levied war, for those purposes and those objects.

Gentlemen, I shall not trouble you in the statement of the case, which I conceive to be a very clear one, with more remarks upon the law of it, than simply to make this statement,—That while the law, as you have heard, requires

that the conspiring to levy war, like every other act of Treason, must be made out and proved, by proof of certain overt acts sufficiently established; the proper definition of an overt act, I take leave to say, has also been erroneously given, (and that is more important for you to consider, with a view to the practical application of the law in your verdict,) by the learned Counsel who opened the case for the prosecution. Gentlemen, he stated to you, that the purpose with which any act is done, is, no doubt, what in all cases constitutes its innocence or criminality; and that in the matter of Treason, either by conspiring the King's death, or by conspiring such war as is here charged, though the act is not committed, the intending and conspiring to do it, if evidenced by overt acts, is sufficient to entitle the prosecutors to a verdict of guilty. But we differ a little as to what an overt act is. Says my learned friend, As the guilt is of the mind, and we cannot see the mind, we must have acts to indicate it. And he said, that any act which indicates a wish or intention of that kind, is an overt act. Now, that I deny: it is by open fact that he must be proved and convicted of this Treason; and the fact must be something which proves not merely the existence of an intention, but that this intention was begun to be carried into effect, or prepared to be carried into effect; and, Gentlemen, it is very material you should attend to that. Gentlemen, I say the law of Treason, and I am confident it will be so stated by higher authority than mine, requires proof of overt acts importing an actual inchoation of the treasonable design. But I say that the mere proof of intention is not an overt act by the law of Treason; and that any thing that is admitted to be sufficient to convict a party, certainly with a view to the intention, must be something that has more in it than mere evidence of the existence of an intention. It must be a step taken towards carrying the intention into effect. I do not mean to say the intention must actually be carried into effect; but I say, the fact done must prove, not merely the existence of an intention, but must be a move towards the completion of that intention. And to illustrate this, I need only state the settled law as to words charged as treasonable. Why, Gentlemen, if all that was required was proof of intention, there

is not only no better, but no equal proof of intention, with that of clear words, deliberately spoken: For, as has been well remarked, there is no other exponent of the mind o thought half so clear, and precise, and certain, as unequivocal words, deliberately spoken and distinctly remembered. That indeed is self-evident. Acts may be, and always are, equivocal, as to the purpose from which they originate, and for the most part require the concomitant of words to shew from what they originate; but the most direct, immediate, and conclusive proof of intention, is the proof of clear words shewing that intention. Yet, Gentlemen, it is settled, that words merely expressing intention are no overt acts of Treason; and to give them this quality, they must be words used, not as indicating intention, but as words amounting to a step towards the execution of the intention—words, for instance, of command; as if I order a person to go and fulfil my purpose, that is an overt act; words, in like manner, approving the act afterwards, or any thing else of the sort—not as evidence of an intention, but connected with deeds either done or to be done.

In case it should be said again that I state the law upon my own authority,—for I certainly never would presume to make any such statement, and thought, when I did it before, I only stated the law upon which we were all agreed—I will read you an authority from an author, I believe, of the highest reputation, upon this branch of the law—from the work of Judge Foster; and I read now, my Lord, from pages 202 and 203. My Lord, it is a question with regard to words, in which he says, that "the rule cited from the State Trials is very properly guarded, being confined to words not relative to any act or design; for words connected with facts, or expressive of the intention of the speaker, may, under some circumstances, bring him within the statute of Treasons." And then, Gentlemen, after stating certain other cases, and explaining them under that view, he says this—after quoting the report of a learned person: "His Lordship reasoneth in this passage, as if he considered the overt acts required by the statute merely as matters of evidence, tending to discover the imaginations of the heart." Then he proceeds: "Overt acts undoubtedly do discover

the man's intentions; but I conceive they are not to be considered merely as evidence, but as the means made use of to effectuate the purposes of the heart. With regard to homicide, while the rule *Voluntas pro facto* prevailed, the overt acts of compassing were so considered. In the cases cited by Coke, there were plain flagitious attempts upon the lives of the parties marked out for destruction; and though, in the case of the King, overt acts of less malignity, and having a more remote tendency to his destruction, are with great propriety deemed treasonable; yet still they are considered as means to effectuate, not barely as evidence of the treasonable purpose." Gentlemen, I might read a great deal more. But I have read this, not as requiring authority to those who know it, but as arming myself with that authority in stating the law to you. It is indeed plain common sense, that a man shall not answer for the intentions of his heart, though made manifest by words; but the overt acts must be steps and means actually adopted towards the completion of the end.

Now, Gentlemen, this, I must say, is all that I think it necessary to lay before you, as to the law of the case which you are to try. And I have already stated to you, in a concise form, what is the plain, simple, ordinary Jury question that you are now to try, under the guidance of this plain and obvious maxim of law. It is, Whether this person waged war, or conspired to wage war, with and for the purpose of overturning the constitution, or compelling the Sovereign to change the law, or to overawe either of the bodies of the legislature? In other words, Whether it is proved that he took steps and did acts intended by him to further and effectuate those purposes?

Gentlemen, before stating the facts in a very short summary, notwithstanding the observation I incurred before, I will not read the evidence; and yet I will neither mis-state it nor omit any thing I think material; but I must just observe, that there is a distinction, and a pretty important one, between the case of Treason as to the importance of the purpose and object, and the case of other offences. It is no doubt true, that all offences receive their criminality, and derive their character of crime from the depraved intention and purpose from which they originate; but it is

by no means a fair parallel which has been attempted, and may again be attempted to be drawn, in saying, that if the fact be proved, it lies with the party against whom it is proved, to shew that the criminal intention did not arise upon it, and that is a matter of legal and common sense inference from the fact, as to which there is nothing more difficult in Treason than in any other offence. Now, there is in all this a very radical and cardinal error. It is truly said, if a man kill another, the fact of killing may be innocent, it may be laudable; or it may be criminal, it may be blameable in a higher or lower degree: To do it in a field of battle, in defence of the King, is laudable—the case of an execution is the same; if it is a robber, it is excusable; if a man kill in defence of his property; if a man is killed in the heat of passion, it is not murder, but homicide; if he do it by misapprehension, carelessness, or accident, it is more or less blameable, and the inquiry, in all these cases, must be, what was the purpose, to ascertain the character of the crime.

But, Gentlemen, you see that in those cases where murder, and homicide, or manslaughter, as we term it, are the charge that is made, the fact of having slain a man necessarily puts the party upon his defence; and the only thing that the prosecutor has there to prove, is, that *it was not justifiably* done. There is only one alternative there: but, Gentlemen, the peculiarity of Treason, and that upon which this case hinges, is this, that acts may be proved, that if the question were merely, whether they were *justifiably* done, may be proved not to be justifiably done, or so as to excuse the party, and would require him to bring evidence that they were justifiably done; but the difference is, that we are not, as in the case of a murder, where a violent slaughter of a man has taken place, and the prisoner is under the pain of being found guilty if he can give no explanation, and that is the only issue. The question there is, whether the slaughter was justifiable or not? and the presumption is against that, and the burthen lies on the party accused. But what is the case of Treason? they may say, quite correctly, that the facts done and proved raise a presumption that they were done *illegally*: but it is not a simple issue, and only

alternative, were they done *legally* or *treasonably*; because they may have been done illegally and yet not treasonably; and there are a great many illegal causes to which they may be referred, which yet stand quite clear of Treason. Now, my proposition in law is on that fair ground, that that being the case here, it lies on the prosecutor to satisfy you, not only that facts were done that are unjustifiable and illegal, (which would throw the burthen of proof on the defendant if he asked an absolute acquittal *in foro poli*,) because there are a great variety of other causes to which they may be referred, and by which the culpable quality and general criminality of the fact which may be established, without any proof of High Treason, is the peculiar and only offence here charged; and therefore, I say, all the burthen of proving that the acts were done *treasonably*, lies on the pursuer; and unless the specific crime charged be proved, the party is entitled to an acquittal without any evidence, and without any explanation at all; and, therefore, it is by no means a fair or just parallel to say, that we must either justify the acts done, or you must refer them to Treason. I demur to that in point of law, reason, and the practice of all courts of justice. The accuser must make out the crime charged; and he does not do that by proving facts that *may* indeed be referred to Treason, but may also be referred to another crime; and he is not to say, because you cannot justify, I will call it the highest offence, and say it is not assault, or illegally resisting authorities, but is treasonable, because it may arise from a treasonable purpose, which you must disprove. I say there is neither authority nor precedent for such a proposition.

Gentlemen, I dare say, with the knowledge you have of this case from the evidence, you will have been at no loss to apply what I have said to the case before you, although, perhaps, correctly speaking, I ought to have laid the foundation of these remarks by a short resumption of the case as I take it to be. I will state how I take the case to stand. I have already said it is not for you to inquire whether the prisoner acted *justifiably* in this matter. You are only to try whether he has been guilty of High Treason, and whether his acts were for the purpose of subverting the

constitution, or of overawing the Parliament. I will not read the evidence, and I am sure I am not fairly liable to censure for this, when I admit that the prosecutor has proved all the specific facts which he has alleged, out and out. I admit, as broadly as can be stated, that it is proved beyond all ground of reasonable question, that the unfortunate prisoner at the bar did march with an armed multitude to the disturbance of the public peace, and did enter into a conflict with the King's forces in the discharge of their duty. In the outset of my defence, I admit all this, broadly and distinctly before you. I did not ask a question of the witnesses who proved those facts; and yet they went on proving them over and over again, which we have been accused of doing in Scotland; but I never in my life saw so much of it as in this first specimen of the English form of proceeding—they brought seven or eight people to tell the same story, of their marching with pikes; Baird in the middle of them, sometimes with a gun, sometimes with a pike, striking his gun on the dyke;—witnesses whom they knew we did not intend to contradict,—and so your time was consumed, not to satisfy you as to the facts, but to impress on your minds the horrors of those deeds, into the legal character of which it is very necessary to inquire. Those facts are admitted; but is Treason admitted because they are admitted?—I say no.

Gentlemen, I might read—I am afraid of imputations which I am not conscious of deserving—it may be said I give my law here too, that an actual attack on the King's forces is an overt act of High Treason, without any evidence of purpose. I say there is no authority for that, properly understood, nor is there any authority for saying that the fact of an attack on the King's forces being proved, throws the burthen of proving any other than a treasonable purpose on the accused party. It does not. I say this, which is a general proposition which I should like to hear controverted, that nothing is evidence of Treason, *prima facie*, or any other *facie*—nothing is evidence of Treason, which, with the circumstances of it, is not fitted to satisfy the Jury, not merely of the fact of a battle, but of a treasonable purpose in giving battle. No doubt it is true, that

the circumstances preceding and accompanying the attack, may, in some cases, be safely enough left to the Jury, as sufficient evidence of a treasonable purpose; but I say, the mere ultimate congress, the actual fact of pushing a pike at the King's soldiers, or half a dozen in a row, could never be said to be Treason, if nothing else was proved,—and there is no authority for that in the passage referred to by the Solicitor-General. The Solicitor-General read to you, from page 219 in Foster; however, I go a little further back, to the bottom of the preceding page, which is the context: "An assembly armed and arrayed in a warlike manner, for any treasonable purpose, is *bellum levatum*, though not *bellum percussum*;" that is to say, it is war levied, though not actually waged; and "listing and marching are sufficient overt acts, without coming to a battle or action;" and coming to action requires a treasonable purpose as much as the rest. Then he says, "attacking the King's forces in opposition to his authority." Now I submit that this means most manifestly, to oppose his authority, and to the effect of resisting the King's authority, and waging war against him, and the whole passage shews it: "Attacking the King's forces in opposition to his authority, upon a march, or in quarters, is levying war against the King. But, if upon a sudden quarrel, from some affront given or taken, the neighbourhood should rise and drive the forces out of their quarters, that would be a great misdemeanor, and if death should ensue, it may be felony in the assailants, *but it will not be Treason, because there was no intention against the King's person or government.*" What does this passage amount to, but that, besides the evidence of attack, there must be evidence of a treasonable purpose, whatever it may be; an intention to dethrone or murder the Sovereign, or to change the government, or to overawe the legislature. Those intentions must be proved, I do not say by direct evidence, but by circumstances; I mean that the naked fact of opposition to the King's troops, does not afford such evidence; and that not only the circumstances stated in that passage, but a variety of others to which I may refer, as coming a little nearer the circumstances of

the present case, will exclude the supposition of a treasonable purpose.

Why, Gentlemen, it was admitted, I think, that if, in point of fact, a band of smugglers are attacked by a troop of the King's forces, and turn upon them and resist them; nay, if in order to clear the way they become the assailants, and go and drive off, by force of arms, the forces who are stationed at a post to prevent their going where they want to go, and carry on their commerce, that is an offence; it might be an aggravated murder, if death ensues—but it is not Treason. It is so admitted,—and yet it may be in furtherance of a pretty general confederacy. I believe on the shores of Ireland considerable multitudes of persons are in the practice of levying such a war on the soldiers; and yet nobody ever thought of trying those persons for Treason,—nor is there the least surmise of Treason. In the same way, if persons commit a felony of any kind, requiring a considerable number of persons to commit it—riot, burning woods, pulling down particular fences, or any thing else, there is a great riot raised, and the military are sent to apprehend them, with a view to their being tried; and if they resist the military, and turn on them and defeat them, or are defeated, no matter which, and many lives are lost, and much blood shed—that is not Treason. Now, supposing any of these circumstances to occur, and some severe zealous person should bring a process for Treason, and have a special commission to try it, and should just limit his proof to give in evidence the actual congress, bringing forward the officers to say they were assaulted in a particular situation, and were then to say, I have proved my Treason. Gentlemen, would that be proof of Treason? It would be proof of something illegal, but would there be evidence to satisfy a Jury upon the mere fact. Supposing the whole scene were drawn up before your eyes, and you saw a set of men with bad coats, and a set of men with red coats, engaged in conflict together, would you say that is a scene of Treason? Would any gentleman consider that enough? Would not you say, I want evidence of that, without which the Treason cannot subsist, namely, the treasonable purpose of the attack. Can it be pretended, that the naked presence of

it is legally and properly sent to you,—but it is sent to you as matter to consider, not as evidence that you are bound to receive, as importing that the prisoner was connected with it as a person responsible for its contents, or proved to be aware of its contents. Not one approach has been made to that; but the tenor of it has been laid before you, because there are circumstances which may, by possibility and by the help of other evidence, make out such a connection between the prisoner and these papers, as to make it fair that you should have them before you as evidence in the whole cause; nay, if I understand the last determination rightly, these hand-bills have only gone to you under a view of the case to which I must say a word by and by,—namely, as part of the general evidence of the general circumstances, and situation, and condition of that district of the country in which these operations, in which the prisoner was engaged, took place; because undoubtedly the meaning of persons in arms, as to whether they are acting against the King's authority or not, will receive a more or less favourable construction according to the circumstances of the times. If there is a great rebellion on foot, a foreign enemy, or a pretender to the throne who divides the troops with the King, and a conflict takes place between a body of armed men and the King's forces, that is a strong ingredient to shew it was a treasonable waging of war that was intended: But in a quiet time, when there is no such disturbed state of the country as to apprehend a rebellion, persons killing some of the King's forces is no evidence of Treason; and the treasonable purpose must be made out independently of the circumstances of the country. Therefore, I admit that these papers are admissible evidence to prove, that in that district of the country inflammatory hand-bills were posted about, exciting persons to such acts as are here charged; but then, Gentlemen, how is it as to the fact of my being concerned in that more than any other part of the population, to all of whom a knowledge of that fact, loyal and disloyal, came.

Now, let us see a little if any thing more can be made of these two hand-bills which you are to take with you, and which have been read to you. Gentlemen, the first of them, it is proved, is a hand-bill that was given by one of the

party, commanded by Hardie, when they were in a state of separation from the larger body with which the prisoner was, which unquestionably was delivered over to Cook, but certainly not in the presence, nor with the knowledge, or approbation, or direction of the prisoner at the bar. In the first place, I do submit to you, that a paper thus partially identified and recollected in a vague way, is excluded from your notice. You are bound to consider that we now stand in a court of law, and bound to enforce the rules of evidence strictly against the prosecutor for a capital offence. I say, you are bound to consider whether there is any evidence of that paper being either the same paper, or a true copy of the paper, that was so delivered by one of that party to Cook. You have heard it was out of the hand of Lieutenant Hodgson for a certain time; that he read it very cursorily—only a part of it indeed; that he looked at it, and gave it to his colonel, but he did not know the contents of it. He got back a paper from the colonel, which he marked, as believing it to be the same. That was thought sufficient to entitle the prosecutor to lay it before you; but is that sufficient for you to hold that this was the paper, or a paper of that tenor, given by that party to Cook with the view stated in the conversation between those persons?

But I must demur further to this evidence: and here we come to a matter that has been already spoken to, and which touches a great part of the evidence on the part of the prosecution; I mean, Gentlemen, how far, or to what effect the evidence of what has been done by one individual, in such cases as occur here, can affect the fate of another individual who has not only not participated in the act, but was not present, and is not shewn by any evidence to have been at all aware of the act. Gentlemen, the rule of law goes no further, than that it is competent to prove those things, in respect of the conspiracy which is supposed to be made out otherwise between the parties; and, even though I do not think that was the unanimous opinion of the Court, or the ground of their judgment, because a different view was taken of the fact, it certainly was held by some of the Court,

that the proof of the subsequent connexion between the parties would be sufficient to render what was previously done by one evidence against the others; and if you are satisfied there is not a tittle of evidence to connect Hardie, the only individual proved to have been of the party who delivered this bill to Cook, with the prisoner at the bar, in that particular transaction,—I say, there is no tittle of evidence to connect them prior to that delivery. I ask you, though the evidence has been found to be receivable, what weight you can possibly think due, in a matter like this, of the approbation of the strain and tenor of a document of this description, delivered over by one of the party, whom it is not proved had at that time seen the face of the individual under trial, merely because they afterwards came to be joined in an illegal transaction, on which, they say, that paper has a certain bearing and connexion? Is that such evidence as to bring home that paper to the prisoner, or any responsibility on his part for it? or is it any such proof of his approbation of it, as to entitle you to proceed upon its tenor as one of the indications of a treasonable purpose in his mind? With great submission, I humbly conceive that such a kind of evidence as this is evidence which, if ten times stronger, I need give myself no anxiety about whatever, being confident you will never convict him of waging war against the King's troops with a treasonable purpose, unless you have evidence that he actually entertained that treasonable purpose. That is the question for you. Does it satisfy your minds, that he had a knowledge of a treasonable purpose, and, with a wish to further it, committed this overt act with which he is charged?

Gentlemen, with great submission I ask you, if you can believe there is here any sufficient legal proof to find that, which, in certain cases, might be the only evidence of a treasonable purpose, and would be good evidence of a treasonable purpose if there was any evidence of the fact. Is there any evidence, that the prisoner knew of a paper being delivered to Cook of a treasonable nature?—or is there any reasonable ground on which you can really think that the prisoner is responsible for that paper, and to be held aware

of its contents? With great submission, I cannot contemplate the possibility of a Jury of humane Britons receiving what is here offered as evidence of that fact, which must be established to your own conviction, that, in point of truth and reality, this individual did know of that paper,—did wish it circulated,—and was instrumental to its circulation by his will and act. It is in vain to tell me of the construction of law. I deny loudly the existence of any law by which a Jury shall be called on to convict a man, on their oaths, whom they do not truly believe to be guilty. It is a constructive treason for which we are to be tried; and are we to be told, it is a rule of law, that if a man without our knowledge does a treasonable act, and we afterwards join his company, that is sufficient to shew a treasonable purpose on our part? Is a Jury to adopt that legal fiction, in order to found a verdict, by which their consciences and oaths are to be discharged, finding that, in reality and truth, in the most naked and substantive reality, the man did harbour that purpose, did act on it, and did wish it to be circulated? To do that, I say, would be to bind a jury to a murderous perjury. For it would not be less, unless you are satisfied that the guilt of entertaining that purpose is brought home to the individual who now stands trembling on your fiat. It is impossible you should not violate your oaths, if, without being really convinced of it, you found he entertained that purpose, and did that act, and that his other acts were therefore to be construed into Treason. I cannot entertain a doubt of these considerations in your minds, or of the result to follow from the description of the evidence, and the tendency and object for which this is pressed upon you. A mere unsubstantial shadow—a nominal essence of evidence—is to be foisted on a Jury in perversion of their own understandings; and they are to be told, that because the law holds as authoritative, what one man does another is answerable for, they must take that rule, though by no means satisfied of his guilt, and they doom a fellow-creature to a shameful, ignominious, and most painful death.

Gentlemen, so much for that hand-bill; and the other is in a worse situation. In the first place, the connexion is still more remote; for even Hardie is not brought into such

dream of the possibility of a hair of his head being touched upon such vague and highly pernicious surmises.

Gentlemen, I have done with the hand-bills; and then we come to certain statements, that are said to be according to statements in the hand-bills. And what are they? So far as I recollect the verbal statements, there is a statement made by somebody in the party in which the prisoner was not—in the party that stopped Serjeant Cook, imparting that they were seeking their rights, as honest men should do. I think that is rather a slender ground upon which to hang this imputation of a treasonable purpose, of actually assaulting and subverting the constitution by force. And that the imputation seemed somewhat strange, when it is considered that they left the only defender of the constitution that appeared unhurt, and unspoiled of his accoutrements. I do not think that it is a very intelligible ground of inferring a treasonable purpose. It was a general expression, that they were seeking their rights. I shall endeavour by and bye to explain the fair meaning of that phrase. In the mean time, it is far from approaching to any thing like a treasonable purpose or intention in those who made it; and it vanishes into nothing against a person who never heard it, and cannot be supposed to have sanctioned it, but by inference or conjecture founded on nothing, and therefore not forming a proof of a treasonable purpose, without which you cannot find a verdict of guilty.

Then, Gentlemen, we have the circumstances of the combat; and a great deal of anxiety was shewn to give them to you to-day in all the detail of their aggravation. I have already said that I admit all the facts there to be proved; and that I do not go to the circumstance of a search for arms at one house, and the taking away of a gun from another, for which, I think, a receipt was offered. That is included in my general admission, that they were unlawfully parading the country in arms, and arming themselves, whether by paying for them as they paid for their breakfast, or taking them without payment, I do not care. The question is, For what purpose were they arming themselves? The question is, Was it for the purpose of subverting the constitution by force, that they did arm themselves? Now, it is said that the

circumstances of the attack prove this. I do not know how this may strike you, Gentlemen, but I confess I have considered the circumstances of this attack, when duly considered, as being the strongest part of the case on the part of the prisoner; for what is the truth? It is said, that they cheered and came down the hill, and fired first; and that they continued resisting a long time after they were called upon to lay down their arms. That is all true. And what is the conclusion? Why, the conclusion that you are seriously required to draw, and which you must draw, if you think that the circumstances indicate a treasonable purpose, is, that it is sufficiently proved by these circumstances, that they sought an opportunity of cutting off a detachment of the King's forces; that they marched out to effect this exploit; that they were the assailants, and the invaders of the peace of the country. If you believe that, without my recalling the circumstances to your mind, I cannot expect much from any statement I can make of the circumstances; but it appears to me to be nothing less than a most manifest absurdity.

This leads me to the last branch of the facts, independent of the declarations on which the prosecutor relies; for there really is nothing but the hand-bills and the combat by which a treasonable purpose is said to be made out. Now, I beg to remind you, with reference to the circumstances of the country, which, I admit, in one view, afford an inference against the prisoner at the bar, but in another make for him. I beg to call your attention to the situation in which these persons were placed; and to what I conceive is, in point of fact, a more natural explanation of all the transactions, blameable and guilty as I admit them to be, which are proved or admitted as against these prisoners, than the explanation, that they intended to march out by force, to subvert the constitution. It is quite well known, and requires no proof at all here, in this part of the country, that for many months, I am afraid I may almost say years, before this unfortunate time, the working classes of this country, and in the manufacturing districts especially, had been subject to great distress; which, for a long time, they bore with great patience and propriety, although at last it produced some of its most

unfortunate fruits, by giving rise to a considerable increase of crimes, first in depredations on property, to which idleness in a manufacturing district will always lead; in the next place, by producing combinations against the masters for higher wages, and for the dismissal of apprentices and other workmen, who took the work which they supposed might come to them; and lastly, The pressure of distress remaining unallayed, received an admixture of a political virus: and then, from want of employment and of wages, they were led to seditious meetings, for impracticable and visionary reforms; and under the colour of those assemblages, riots took place, and pillage was multiplied.

The poor of the manufacturing districts of the country were notoriously in a state of great distress: in the first place, great discontent arose; and in the second place, a great tendency to all species of crimes. Certainly, Gentlemen, those crimes must be punished when they occur; but it is the crimes that occur that are to be punished, and not those that are suggested or imagined, in their place. Now, Gentlemen, a great part of the population of Glasgow, and I dare say, without much uncharitableness I may say, the whole of the unfortunate parties that have been arraigned in this matter, were engaged in unlawful practices—in combinations against their masters, probably riots, attending upon seditious meetings, hearing seditious speeches, and joining tumultuous assemblages of the subjects. And, Gentlemen, this evil, every body knows, was upon the increase—it was spreading far and wide; and a certain intimidation of a vague nature had been excited on the one hand, and certain strong preparations for resistance made by the police on the other—I do not deny, very laudable preparations, though not then sanctioned by the statute law of the land, as you all know they have since been. Now, Gentlemen, in this way, while the reformers, which, with all due deference to other authorities, I take leave to say, is a very distinct term from traitors; while the reformers of the district, unemployed workmen—while the seditious reformers, quite a distinct class of persons from traitors, were gaining strength and confidence on the one hand, and, on the other, saw the police and a

voluntary armament (very necessary and proper, I dare say) multiplying against them; was any thing more natural, (I admit, extremely culpable; I am not saying a word in exculpation of it,) but was any thing more likely, than that those persons should take arms to secure those illegal practices to which they had been addicted? And, therefore, these men, arming themselves, in order to prevent men from preventing their rioting in the street—to prevent the soldiers from preventing them from pillaging houses, or from assembling, (which I do not know then to have been an illegal thing,) to hear harangues, where they were liable to be dispersed by a military force; that they should arm themselves with that view,—I ask you, whether you are not to hold that that was a more likely cause of their arming, than a design to subvert the laws? I think by far the most natural thing to presume is, that they intended to do as they were doing—increasing their numbers; and, as some of them said, if the numbers were very great, and the sense of the public was ascertained, and could not be interfered with, they might rise to such a height, and shew such a preponderance of natural power, as would induce all men to agree in the requests that were made. I do not think it was very likely to happen, but it was natural for them to think so.

Now, if that was the purpose of their arming; nay, if it was the only intelligible purpose, that they went to bring into town other petitioners and reformers, while there is nothing whatever to shew that they were by force to overturn the constitution, but merely to shew how strong the cause was in number—in all likelihood to put in clamorous petitions for reform; can any thing be so natural? It was a breach of the law, perhaps, to walk armed, in order to escort those new recruits to the standard of reform; but that standard was not the standard of rebellion. There is no evidence to connect these proceedings with any thing but a state of discontent and disorder; of seditious and absurd and tumultuous meetings, held and holding at that moment, and for the greater glory and advancement of which, such a proceeding was natural. Then, are you to infer a treasonable purpose in an individual, when the acts are capable of explanation on a lower scale of guilt? If they wanted to

and therefore they skulk away from the chance of meeting with any force; and there they are found by a party of soldiers, who gallop up to them to make them prisoners.

Now, is there any thing in all this but an ordinary resistance to an arrest? Is not that the true and palpable colour of the transaction? Will any man, who looks at the case, and knows what soldiers are, say in his heart that there is any proof—that there is any shadow of likliehood, that there was a design here to attack the King's troops, and to subdue them? Did they not know that the whole country would give a check to this? Did they mean to raise their standard on Bonnymuir hill, and march in the colours of the clan to Kilsyth, and then to Stirling, and demand the castle. They knew they must be overcome and defeated; and to say that was the first step of actual war, and that they marched, twenty-four, with loaded pistols and guns, and these beautiful pikes, men weary of wandering about all night; that they thus went forth to wage war against the King, in hopes to subvert the constitution, I say is a mockery, and the circumstances of the conflict are brought in merely to blind and delude you.

Then, as to the character of the conflict, which no man can mistake, wink as hard as he can, or misapprehend—it was a foolish resistance to an arrest of known and convicted depredators, an illegal banditti, who were running about the country. And this is the whole matter: To say this was a purpose to subvert the constitution, in hopes to establish a provisional government, is a matter that is not to be seriously dealt with.

That being the true state of the case, what is there in the proceedings which take place here? These men, lying down, half asleep, saw the cavalry coming; they must be, by the best account, twenty-four men. Both Serjeant Cook and Lieutenant Hodgson, correct persons, say, they think hardly any escaped, but one or two; and they say they were all armed, and it is certain there were but sixteen pikes, and one shaft without a head, and fire arms of some kind, and two pistols, by the best account; one man says seven, the others say two, and I fancy there are but two there in the box, if you look; and some of them were doubly arm-

ed, which is rather odd, but it is so sworn; a musket requires two hands, and so does a pike, unless they were like Briareus of old, I do not know how they could use such instruments. They could not muster above twenty-four men, ungrown boys: little beggarly half-starved creatures. I think three dragoons would have gone over them, with such arms and discipline; and yet are you to imagine they expected to make a conquest—persons who were half drunk, worn out, disappointed, and returning. I suppose a stag is no great match for a pack of hounds, but yet it gives the pack some trouble before it yields; and some such trouble the dragoons may have had here. Yet it is said they might escape. A skilful officer told you so, that they might have got off, so that they could not have been identified—I do not think they could; because they had been up all night, and were confused and exhausted; and how long it would have been before they were overtaken, does not admit of much calculation. Their chance of escaping horsemen was very small, and the only hope that should have suggested itself was, that by throwing down their arms, they might have come off better than by resisting; however, if there was a chance of that kind, it does not occur to me—most likely it would not occur to you; and therefore we may suppose it did not occur to the radicals, who are quite as stupid and foolish as we; it would not occur to me that I had much chance of escape by running—the soldiers drew their swords, they came up with a gallant show, they outnumbered them nearly three to two, they had sixty-four fire-arms charged, and they had swords, which they knew how to use and direct; therefore, there was no sort of match. But, I suppose, they thought they might get some little terms of parley, which would be better than being cut to pieces in a flight, and that their only chance was to make a treaty; and accordingly Lieutenant Hodgson says, one of them spoke across, and said they would treat with him; and he says they fired no more after that, until the soldiers got in among them, and were cutting some of them down, when there is just a sudden burst of courage. Sailors huzza when a ship is going down, and these men acted in the same way; these men said, Huzza, let us get to the dyke, and see if we cannot force them to treat

with us—as to conquering them, it is too ludicrous to think about, and they get angry, which often occurs to better soldiers; and there is a hurry and disorder, and they run to find a gap to save themselves. They were delinquents, and they did not know what soldiers, with their antipathy to radicals, might not do against them—and therefore they mounted the breach, some blows were exchanged, and the battle took the turn that every man must anticipate. But the fact of these persons running behind the dyke, and firing, I think, in a cowardly manner, a few shots on the soldiers, before they fired on them, and then continuing to hold their arms till terms were settled, and then endeavouring to hold the breach, and saying, we had rather treat with you,—all that, I say, whether foolish or not, is natural,—natural to whom? not to men going to fight, to men that were resolved to assert and maintain a position, but to men surrounded and surprised, and afraid of summary execution by those who came to arrest them, for offences unconnected with Treason. Every thing that took place at Bonnymuir is distinctly explicable,—I say is *only* explicable upon the supposition of their resisting violently an arrest, and that their conduct at the time, as well as before and after, and all the evidence of their actual condition and deportment affords irresistible proof of this, to every man of a calm understanding, without saying any thing of the mercy you must feel. It is impossible seriously to doubt it was the result of a desperate resistance of a gang of delinquents to prevent an arrest.

Gentlemen, I do not think it necessary to go into a detail of that offensive forwardness which is imputed to the prisoner individually, because if Treason existed, it existed in the whole body, and you cannot imagine *he* intended to wage a solitary war. You must suppose that his confederates were in the same view, which is nonsense; he is either a more angry or more brave person than the rest, and he took the lead in that criminal, and it might have been murderous work; but *Treason* must be proved against him here by deeds and open fact. That is the question you have to try; and I do not care what you think of this individual, so you think and find, as I humbly submit you must

do, that there is no evidence of his having nourished the purpose, or done the acts he did in furtherance of that purpose; and if he did not, they are not acts of Treason, according to any sound definition of Treason.

I need not go to the transactions at Camelon; I have admitted that the persons armed themselves; I have stated that it was an armament to enable them to continue these seditious meetings, or perhaps to indulge in pillage, and that is the true and only admissible explanation of it. Those who offered pikes at a dozen for a shilling, are more to blame than those who bought them. I began by admitting he illegally armed himself, and paraded the country, and bought arms, and was an active person in the use of the arms on that occasion, of resisting a lawful arrest; but that has nothing to do with the guilt of Treason, and I have done with that view of the case,—and I am very near done with the whole case: For it seems to me that there remains only the matter of his declaration—a painful matter undoubtedly, and you must consider the evidence afforded by the admission of a prisoner arraigned for his life, after his commitment, as a kind of evidence to which it is always painful and deplorable to be obliged to look for the materials of his conviction. A deliberate and advised avowal of guilt, upon the principle of penitence, seeking and courting the punishment which he thinks he deserves, requires no commiseration, and is entitled to no respect in some cases; but that sort of evidence elicited, I do not mean improperly, but actually obtained from the unguarded admissions, perhaps the rash and inaccurate words of a party wanting to deny the guilt, and take the benefit of putting his accuser to prove it, is a kind of evidence which it is revolting to be obliged to dwell upon, and which I am sure will be placed less in sight, and be weighed with a more niggardly and closing hand than any other. Evidence of the fairest and most unexceptionable sort should alone be brought against a person in that situation; the man may have been guilty of offences, but is still entitled to the benefit of the law, that they shall be proved against him; and if his admission is not in a fit of penitence, and courting of punishment, where he desires fairly to face

gally, and as no jurymen of Scotland ever did before, if it was not the foremost consideration in your minds—if it did not press on you continually, with a force far superior to any that I or a more eloquent person could move you with, to consider well the nature of the evidence, and the possible errors in the evidence, that may incline you to find against him; and to raise up all those suggestions of kindly and tender construction, to which, I say, all cases of obscure evidence are to a great degree liable; and which are not *justly* construed, unless they are *mercifully* construed.

Gentlemen, if the law did not equally allow of the interference of human sympathies with the mere exercise of the intellectual faculties, in the appreciation of evidence, and in the adjudication of guilt or innocence, the institution of trial by Jury would have no existence; and if that was erroneous, the institution would not only be erroneous, but pernicious and absurd; for, with all due deference to the active diligence and the manly feeling which I know to exist in the Juries of this land, I must say, as to the consideration of evidence, with a view to the exercise of the intellectual powers, or a comparison of circumstances of dubious consideration, that the delegation of that power which is delegated to you, by those tribunals under whom you exclusively must exercise it, would have been an injudicious, a preposterous, and a pernicious delegation. It is not because you are wiser or more sagacious than the judges of the land, but because you are supposed to be more accessible to pity and mercy, and to allowance and indulgence for human infirmity, and for kindly constructions of ambiguous acts, and unwillingness to admit evidence legally complete where a flaw and doubt remains, and where the consequences of admitting it arise with all that force and painfulness that their novelty, to persons inexperienced in the trade of blood, into which those in the law must dip their hands—it is on these considerations that the trial by Jury is established; and it is invaluable in that view, as an establishment. I do not dispute, that where guilt is clear, and the law is clear; where there is no loop to hang a doubt upon, and no scope for consideration; there the pleadings of mercy will wake in vain, and the Jury then must steel their nerves to the discharge of their stern office, and imitate the severity of

the law itself, in the inflexibility of their decision. But, Gentlemen, there are hardly any such cases; and this is not one of them. For I have made this remark, to suggest to you what must be impressed already on your minds, that this is a question of all others the most liable to doubt in the construction; for it is not a question of *fact and evidence*, in one sense; but it is a question of construction, and conjecture and inference, as to *the purposes of the heart*, and as to the one, out of many motives to which the acts that are proved shall be held to be referable. All the direct facts are admitted—we clear the field of all disputes of what is to be believed; every thing in evidence is admitted to your hand, as stated by the prosecution—I have not omitted any of it intentionally: and then the question comes to this: With what intention, for what purpose, were those acts performed? And is it to be said, that when it is suggested that they were performed in the mere rash and desperate attempt of resisting an arrest, by persons committing delinquency, and not in a plot to subvert the constitution; and that this is proved by the whole course of proceeding, where they might have done some such thing with effect—is it to be said the evidence must be disbelieved, and that you cannot find a verdict for the prisoner in conformity with the evidence? It is founded on inferences from evidence; and whether that establishes an actual purpose to subvert the laws, and compel the legislature to alter their measures, is a matter of construction and inference; and all mortal men agree it is most difficult to ascertain the purpose of an individual. I have said already, you will receive no aid from appealing to common cases of homicide; because the question is there, merely whether the act is justifiable or not? But here, I admit, the acts are not justifiable; but I say you must rather apply them to the inferior offences.

Gentlemen, in such a situation, is it not reasonable for me to say you should be induced to take that course, in a matter of the utmost difficulty and nicety; and that it would be becoming in you, by taking the most probable supposition, to free a man from the tremendous fate which now hangs over him; and restore a person in the vigour of life, to a wife depending on his labour, and a soldier to his country? Are

these mere declamatory appeals to your passions? I say, on the contrary, they are the first, and the most pre-eminent, and the most important considerations to which you are bound to look, and by which, on any doubt, you are required to take refuge in the salutary, the humane and godlike attribute of Mercy. Where there is any doubt or hesitation as to the peculiar guilt alleged, it is a fixed maxim of law and practice, which common sense would dictate to a Jury,—that they must lean to the side of the prisoner. And, however they may suspect, however individually they may believe, or feel convinced, so as they would act upon the conviction in the ordinary concerns of life; where the question is on a matter where they may be mistaken—where a great stretch of charity may persuade them that the particular guilt charged has not occurred, they are not to venture to decide as to a man's motive, at the peril of sacrificing to a guilty man, I admit; but a man innocent on this charge, on a surmise that his acts are bad, and to award a punishment, because they will take the most aggravated view of his conduct.

I have said this, I trust, not in the tone of a supplicant to your passions, or as pleading for mercy to one whose life is forfeit to justice, but as materials for your deliberation, which, if taken into view with the whole circumstances, I trust, will enable you to return such a verdict as will bless your latest hours with the recollection of a judicious humanity, and free this unfortunate man from the tremendous peril, on the brink of which he has so long suffered.

I am desirous to state, that in this case we do not think it necessary to trouble the Court with the examination of any evidence.

Lord Justice Clerk.—John Baird, now is your time, if you wish to address yourself to the Jury who are trying your case. (*The prisoner bowed.*)

REPLY.

Lord Advocate.—May it please your Lordship,—Gentlemen of the Jury,—You have just now heard concluded, a speech of such talent, and of such eloquence and power, as cannot fail to have excited in you sentiments of the highest admiration; and, even in me, they have renewed those feelings of wonder which have been often excited in my mind, in hearing the eloquent addresses of my learned friend opposite—wonder produced by seeing the goodly fabrics his talent is able to raise out of such slender materials!

Gentlemen, it would not become a person holding the situation I do, to address you in any tone, except in one of cool and deliberate reasoning, to view this case in a sober point of view; and to consider very briefly, as briefly as I possibly can, the law and the facts of the case now brought under your consideration.

Gentlemen, Mr Jeffrey has admitted, times without number, that his unfortunate client, upon the present occasion, has done every thing criminal that can well be imputed to an individual. He has admitted him to be guilty of every thing but Treason.

Now, Gentlemen, it will, in the first place, become matter for your consideration what Treason is; and that is a point on which, I humbly apprehend, you must look for direction from the Judges above me. It is a point on which you cannot, from your own knowledge, form a just estimate. Gentlemen, it is of the utmost importance, that points of that kind should be decided by Judges, that men may know how they truly stand; for if such matters were left to Juries entirely, I need not point out how difficult it would be to square our actions: for one Jury, supposing it perfectly impartial and intelligent, might take one view of a question of law, while another, no less intelligent and impartial, might

take precisely the reverse. The law of our country, therefore, is fixed by our great judicial authorities, by those who have spent their lives in the study and practice of the law—it is from them that you can with certainty learn what is the nature of the crime which is here laid to the charge of the prisoner at the bar.

Gentlemen, the indictment which is now before you, contains three different counts or charges, founded, two of them, upon an old statute, the statute of Edward the Third, which declares that the compassing or imagining the death of the King, or the levying war against the King within his realm, shall be Treason; and the third on a statute passed in the 36th of the late King, by which it is further declared, as explanatory of the former, that to devise or intend death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint, of the person of the King, his heirs or successors, or to deprive him or them from the style, honour, or kingly name of the Imperial crown of this realm, or of any other of his Majesty's dominions or countries; or to levy war against his Majesty, his heirs and successors, within this realm, is treason. In considering how far the facts proved do amount to an overt act of treason under these statutes, I am confident it will not be disputed, that such attacks need not be confined to the Kings personally; but that all attacks upon his government are equally Treason, as if they were directed against the person of the King himself; and the reason was well pointed out to you, the King is in truth one of the three estates of the kingdom; and it is impossible to attack the government which is composed of these estates, without at the same time attacking the royal Majesty. Further, it was well said, and well you must feel it, that it is impossible that any attack upon the government of the country can succeed, or be attempted, without putting the King's person in jeopardy.

Gentlemen, on these subjects I shall not waste your time, at this hour of the night; as I am confident it will be stated from the Bench, that any insurrection, by any set of his

Majesty's subjects, having for its object not a private, but a general and public purpose, if such general and public purpose is made out, in point of fact, to your satisfaction, is High Treason by the law of this country. I shall not trouble you with authorities; but I hope to be forgiven if I just quote one, the highest living authority, on the subject, that it is in my power to lay before you. It is the opinion of the Chief Justice of England, upon a case that occurred within a very few years ago, the case of Brandreth, on the occasion of riots at Nottingham. In his charge to the jury, after mentioning the terms of the statute of King Edward the Third, and shewing that it applies only to public purposes, he expresses himself thus:—"You see, therefore, Gentlemen, that by the tenor of this ancient statute, those offences only are to be considered as Treason, which relate, in some way, to the King, and to his Royal Majesty—private quarrels and private objects are declared not to be Treason. It has, ever since the passing of this statute, uniformly been held, that where the object is public and national; where the attack is against the constituted government and authority of the realm, of which the King is the head and chief—that is High Treason against the King, within the meaning of this act." And again, shortly afterwards, he says, "The charge, as it is attempted to be proved by the evidence, (but of which you are to judge,) is a charge, that an assembly of persons met together and armed themselves, for the purpose of assailing, and endeavouring to overturn, the established government of the country; and actually moved forwards, for the accomplishment of that object. This is the charge. And that such an assembly, acting in such a manner, and for the accomplishment of such an object, is a levying of war against the King, who is the head and chief of the government, is a proposition which no Court nor Judge, nor any writer on the law of England, has ever questioned—in every Court, and on every occasion where the point has arisen, this proposition has been laid down, and acted upon, as a clear and unquestionable proposition of law." Gentlemen, I can conceive no terms more explicit than those which I have now stated, as to the na-

ture of the law; nor any opinion more decided, than is there given. And sure I am, that no higher authority can be laid before a Jury of British subjects, than the opinion and direction of the present Chief Justice of England.

Holding this, then, to be the law, I shall take the liberty of submitting to you, that the present case necessarily leads to the investigation of three points. In the first place, Was there here an insurrection? In the second place, Was the object of that insurrection a general one? And, if these two points are made out, Whether the person at the bar was accessory, or a party, to that insurrection?

Now, that in this case there was such insurrection, I submit to you, is a point which the evidence fully supports. In treating this part of the case, Gentlemen, it is necessary that I should refer to the opinions which you heard delivered from the Bench, namely, the competency of bringing under your consideration, evidence of facts, as touching the question affecting the prisoner, which occurred at times when he was not present. You heard it laid down by the Bench, that a person, by joining a conspiracy already existing—by becoming party to it, naturally thereby connects himself with the whole previous proceedings to which that conspiracy had given birth. I shall not, however, found upon the circumstances which occurred before the appearance of this individual, for any other purpose but to shew the general nature and object of that association and conspiracy in which he joined.

Now, Gentlemen, you have the individual here before you proved, and I shall afterwards more particularly refer to the evidence on that part of the case,—proved to have been at this engagement at Bonnymuir; and, previous to that, you find him acting as a constituent member, or rather as a leader and director of a set of persons, marching through the country armed, and ending in the act of which we have this day had evidence adduced before us. Having thus connected this individual with that insurrection, I conceive I am justly and legally entitled to go back and prove to you the nature of that insurrection, by the acts of those engaged

in it. With this view, I must take you back to the town of Glasgow, on the Sunday, the 2d of April, where you have evidence laid before you of the proceedings that occurred at that time in that great city—proceedings occasioned by an Address, which, upon that night, was posted up all over that great town, and was soon after posted over a great part of the western part of Scotland. Gentlemen, that that Address was a most treasonable document, has been most fully admitted by my honourable friend in the course of his speech; having for its object the raising of the subjects of this country into open and decided rebellion. No person can look at the document, and not be satisfied that such is its import; and that it had that effect to a certain degree, is a matter that no one can dispute, and was proved by Mr Hardie, who told you, that in the preceding week Glasgow was in a state of quiet and composure, but, from the moment that Address appeared, the state of matters was entirely changed—persons shut up their shops at unusual hours, crowds of persons were collected in the streets—not in the usual way of idleness, but marching four a-breast, in military bodies, evidently exhibiting to all who saw it every symptom that a country could afford of approaching and decided rebellion.

Gentlemen, in this situation of matters, the person who yesterday was convicted of the crime of Treason at that bar, and of whom, therefore, I am entitled to speak very differently from what I should be of any other of those persons not yet brought to trial; that person has been proved to you to have been accessary, in an extraordinary degree, in the publication of this individual Address;—for I speak it under the authority of the Court, and, though my honourable friend Mr Jeffrey may deny the proposition in point of law, he must yield to the Bench; that the violent resistance of that individual against the magistrate taking it down, rendered him guilty of publishing that Address to the world, and guilty of a direct act of Treason, as much as if he had been the framer of that Address.

Gentlemen, a great deal was said upon the subject of these Addresses by my honourable friend Mr Jeffrey, who admitted them to be proofs of the state of the country at the time—that they were decided proofs of the state of the public mind at that time; yet, considering them in that point of view, and, of course most important evidence for your consideration, he resisted our reading any one of these documents. I certainly did not think he was so successful in that part of his argument as he usually is. That document, I submit, has been brought on your table in a manner perfectly competent. It was produced by the magistrate—not the copy he attempted to take down, but a copy he took down a few yards from it, but which, he says, was a copy of it. Now, the former prisoner Hardie having been thus concerned in this publication, it is proved he followed the directions of this Address in one of its objects, namely, that all men should cease from labour—and a most important object it was to gain, if the promoters of this Address could have accomplished it. We have reason to rejoice that certain Acts of Parliament, lately passed, were then in operation; for if no such law had existed, and it had been legal to assemble men to any number—to ten, twenty, forty, a hundred thousand, consisting of the population all round, at once,—can any person doubt that the purpose this Address had in view would have been further accomplished by a general meeting of the inhabitants?—and what the consequences of such a meeting might have been, no one can now form a true estimate of.

Then another object directed by this manifesto, was, that persons should go forth armed, and should not lay down their arms; the words are, that they should either return conquerors, or return no more; and, accordingly, the next morning—the morning of Wednesday the 5th of April, Hardie is seen marching forth with a body of armed persons, to a place called Condorret, five or six miles from Glasgow. The prisoner Baird appeared there, and from that moment he and Hardie were united together, or at least concerned in the same proceedings and transactions, until they were taken prisoners at Bonnymuir.

Now, it is proved that persons to the number of twenty-four, (and you will be told from the Bench, that the number cannot affect the case in its real merits,) came armed to this village of Condorret, and from thence proceeded onwards, every moment, by their conduct, endeavouring to make more explicit and clear the purpose of their journey. The first place you find them, is at the Bridge of Castlecary, where they breakfast, and where the evidence of the person who keeps that house shews, that they came from Glasgow, all of them armed with pikes; and there circumstances were mentioned which shew their real object. The mode of paying their bill was somewhat extraordinary, for though it amounted to only 8s., instead of paying ready money, it was proposed that the landlord should take a note of some description, payable at a distance of six months from the period that this debt was incurred—What great object was expected to be accomplished in that period, you will judge. This not being agreed to, they contrived to make up 7s. 6d., for which they insisted on a receipt being given. This shews that the receipt was intended as a document, hereafter to be shewn to others, as proving that expenditure to have been made, with the view to its being repaid. "The party called, and paid for porter and bread 7s. 6d. by cash." From this the party marched towards Camelon, and it is proved they proceeded to take arms by force; one of the witnesses has sworn to one of the guns found at Bonnymuir having been one of several thus taken in a forcible manner; and therefore it is a matter without doubt, that this robbery was committed by them. Then they proceed forwards, they stop a hussar, and draw up in a regular military form—they then demand the hussar's dispatches, then his arms, and it was only in consequence of his assuring them he was a friend to them that they abstained from taking his arms; and finding he could read, they furnish him with a copy of this treasonable Address, taken from a roll of these documents, which it is proved the party were carrying for the purpose of circulation, in order to be by him read among the rest of his companions. From thence these

persons are traced along the banks of the canal, and not having met their friends, they came to the resolution of passing towards Bonnymuir, in the progress to which, they are proved by Robinson to have been marching in a regular military array, with pikes and arms, past his house.

Now, Gentlemen, if the thing had stopped here, I humbly submit to you, upon the authority of that case, the law of which I have quoted, namely, the case of Brandreth; that I should have been entitled to ask, at your hands, a verdict, finding that this person had been guilty of levying war; for in the case that I have stated to you, and I speak it under the best guidance, inasmuch as a Judge, now in my eye, conducted that prosecution; in that case the parties fled at the appearance of the soldiery, and there was no attack whatever. The persons dispersed when the military appeared, they were merely in a state of insurrection, but they had risen for a general purpose, the self-same purpose that these persons say they rose for, namely, to gain their rights—in short, to establish a revolution or reform in the country. In Brandreth's case, the offenders had not the courage of our countrymen, for they took flight at the appearance of the soldiery; they dispersed and offered no battle, and yet there, where that last act was wanting, it was held by the first authorities of the law, that the levying of war was completed, and the Jury found so. The persons indicted were convicted of Treason in those cases; they suffered a capital punishment, and all lawyers, and every individual fitted to judge of the cases, thought the cases wisely and rightly adjudged.

But the purpose of the assemblage whose proceedings we are now considering, is made still more apparent, as these individuals, after passing along armed in this way, go up to Bonnymuir, to which place they were followed by a party of the King's troops, consisting partly of the 10th Hussars, and partly of the Stirlingshire Yeomanry; and it appears, in evidence, that, from the situation in which these individuals were placed, upon the top of a hill, they saw the King's troops advancing at a very considerable distance. Now, you

will consider, Gentlemen, what line of conduct persons in this situation ought, and were bound to have pursued, supposing them to have been engaged in nothing criminal. If they had had no treasonable object in view, I submit they would have dispersed, and not have attempted to encounter the King's troops. And Mr Hodgson told you they had the full means of dispersing, if they had thought fit so to do; and that they had such means, is further demonstrated from the situation of the place in which they were drawn up. There is a plan of the ground upon which this affair took place now on the table, from which it appears, that at the very end of this wall, close by that slap, to which I shall have occasion to speak, and where the most serious part of this rencontre occurred, there was a very considerable piece of ground covered with wood, and it was further stated to you, that this planted ground was of a very wet and swampy description. Now, you will consider, whether these persons had not thus the best means that could be well figured for persons on foot to escape from individuals on horseback; and if they had wished to escape, they would doubtless have availed themselves of those means; but that, Gentlemen, was not their object;—their object evidently was, from the beginning, one of a general nature, namely, that of accomplishing, in one shape or other, a change in the constitution of the country; and if they had succeeded in defeating the armed body thus sent against them, no one can doubt that at that moment this general object would have been considered as most materially promoted. That such was the object truly in view, is proved in the only way that such a fact can be proved, namely, first, by the declaration and statement of the persons themselves who were concerned in it; and in the second place, by the acts which they themselves did upon the occasion.

With respect to the declaration of the party, a good deal was said upon that subject by my learned friend, Mr Jeffrey, who naturally felt how much his case has been narrowed by the declarations of the person now upon trial. Gentlemen, my learned friend, the Solicitor-General, brought

fully under your view the expediency and necessity which exists for the safety of the innocent and for the detection of crime, why individuals under suspicion, when first taken before a magistrate, should be examined, to give an account of the matter laid to their charge. This I believe, I can say confidently, is in this country considered as a most important part of the duty of a magistrate, and none is performed with greater fidelity by the Sheriffs; and on the present occasion it is satisfactory to me to see that these declarations were not only taken by highly respectable individuals, among others my honourable friend the Sheriff-depute of Edinburgh; but that they were taken by different Magistrates, at different places, and at different times; because, if in the first of these declarations the prisoner at the bar committed any error or mistake, it is impossible to believe but that the most full opportunity was allowed him to correct it in the subsequent examinations.

Now, my learned friend, Mr Jeffrey, said these declarations contained only inferences, and not facts; now you will look at them,—and I submit they contain a distinct narrative of fact, which has been confirmed by all the witnesses who have this day been examined. These declaration detail the causes for the prisoner's connecting himself with this insurrection, and the intention and acts of the parties, from the time he joins them, down to the time that they were all taken prisoners. Gentlemen, such evidence has ever been held as legitimate and admissible evidence by the law of this country; and I see, in this respect, that the law of England is in no way inconsistent with our own; on the contrary, by that law more weight is given to a declaration by a prisoner before a Magistrate, in cases of Treason, than is admitted of in this country,—or, at least, than I shall ask at your hands this night;—for it is there ruled, that upon the declaration of a man, taken before a Magistrate, (freely and voluntarily, of course, as it must be,) acknowledging his guilt, if proved by two witnesses, upon that declaration, and that alone the prosecutor is entitled to ask a verdict of conviction. I should not state

this, if I had not authority; but I shall beg to refer to Phillipps on Evidence, which I believe is admitted as an authority on all occasions. On the subject of such evidence, he says, "From the above cited cases, it appears now to be an established rule, that a full and voluntary confession by the prisoner, of the overt acts charged against him, is of itself sufficient evidence to warrant a conviction; and although Mr Justice Foster suggests that the rule for admitting a confession against the prisoner ought not to extend further than to a confession made during the solemnity of an examination made before a Magistrate, or before some person having authority to take it, when the party may be presumed to be properly upon his guard, and apprised of its danger, no distinction of this kind is to be found in the authorities before mentioned." You see here, it goes this length, that the confession of a party, if proved, though not before a magistrate, is admissible evidence against him. Mr Justice Foster doubts that—he does not doubt that a declaration taken before a magistrate, if proved by two witnesses, is complete evidence, but Mr Justice Foster doubts, if an acknowledgment, not before a magistrate, will be sufficient for that purpose. But he says, that although Mr Justice Foster suggests that the rule for admitting a confession against the prisoner ought not to extend further than to a confession made during the solemnity of an examination before a magistrate, or before some person having authority to take it, when the party may be presumed to be properly upon his guard, and apprised of its danger, no distinction of this kind is to be found in the authorities before mentioned;—on the contrary, in Francis's case, the Judges resolved that the confession would be evidence, whether made before a magistrate, or in the course of conversation; and there appears to be no solid ground for such a distinction, as confessions are admissible in trials for High Treason, precisely on the same principle which made them evidence at common law.

Gentlemen, this is the law of England upon the subject, and it carries the matter, you see, greatly further than what

we in this country have been used to carry it; because we only consider a declaration as a species of evidence calculated to throw an important light on the case, but not of itself sufficient to lead to conviction, if denied. Though a person has acknowledged the crime, if he retracts that at the bar, the declaration would not be held sufficient evidence against him. But I do not mean this night to rest my claim to your verdict upon this declaration alone; this document does, however, afford evidence of a most important nature for your consideration.

By the declaration of this individual, it appears that the purpose of the assembling was of a general and public nature, He has told you his purpose in the plainest possible terms, by saying, when interrogated, "What purpose the declarant and his party had in view? declares, that, according to the mode in which Reformers proceed, no purpose was mentioned,"—that is, no immediate object. You will see, when you follow it, no object of this meeting going further was mentioned; but the general purpose of their meeting was understood, he says, "according to the mode in which Reformers proceed—no purpose was mentioned. That the declarant's intention was to obey the orders he received; and if he had asked what the purpose was, he would have received no answer. Declares, That the purpose was connected with reform,—that it was a radical reform in the Commons' House of Parliament; and the declarant believes this to have been the understanding of the party. That he believes there was something of annual parliaments in it. Declares that reform was the general purpose." He did not know the particular purpose, but what they were doing was in furtherance of a general purpose, of which he has given this explanation, as to which you can have no doubt of its nature. It was no private reason of any sort, but a general purpose, as connected with the general state of the country,—that is proved by the declaration, and by the acts,—for all the acts go to shew that the persons had not for their object any private purpose—no such private purpose has been attempted to

be stated to you. Mr Jeffrey talked a great deal about various crimes, and of the various purposes these persons may have had in view, but he has not condescended on one object of a private nature which this insurrection was meant to accomplish.

Persuaded that you will be satisfied that there was here an insurrection, and that the object of that insurrection was of a general, public, and not of a private nature, the only matter that remains behind, is to inquire what share this individual had in that conspiracy. Gentlemen, on that head it will be unnecessary for me to occupy any great portion of your time. The first matter, in point of date, that applies to him, is a circumstance which Mr Jeffrey has not at all adverted to, namely, that we find this individual, on the Monday, employed in procuring pike-heads at the village of Camelon. I do not say we have proved how these were employed, but we have proved that Hardie was on that night engaged in collecting them. Besides, this was not the first meeting he had with those who prepared them. We find him, two days before the battle, taking away these pikes in a secret manner, when he could have no object, but one of a treasonable nature, and making an arrangement to meet on the banks of the canal on the following night.

Now, Gentlemen, the next point worthy of notice is the party from Glasgow seeking out the prisoner at Candoret on the morning of the 5th of April; and from that time, down to the period of his being apprehended, it is acknowledged by him, in the most express terms, that he not only promoted this insurrection, and became one of it, but he was constituted the leader of it; he was the commander of a division, and was obeyed as their officer. In short, the whole arrangement was of a military nature; and one of the orders which Hardie received, and which he obeyed, was, that, in the event of being opposed by a military force, he was to resist. The terms of that part of the Declaration are, "that they had orders from the commanders to stand out, if they were attacked by any military force. Declares, that they were attacked by a party of the Hussars and Yeoman-

opposed—they might not think that the King's troops were of that regular species of force which they happened to be—and they were concealed from their view for a considerable time before they engaged; and I can easily see, too, that these persons, if they could have succeeded in that enterprize, might flatter themselves with results of a very different nature from those my learned friend Mr Jeffrey stated. It is impossible with certainty to know their views; but the strength of the party altered not the case. It is enough that they considered the means adequate, whether they were so or not; and upon this part of the case, I shall appeal again to the authority of my Lord Chief Justice Abbott, who says, "It has been urged, that the means which these persons possessed were wholly inadequate to the end they proposed, and that it is absurd to suppose that the government of the country could be overturned by such an assembly of persons as this, even with the aid they expressed themselves to expect; but, Gentlemen, the question is not whether their design was likely to succeed, but whether they entertained it. The improbability of success may be used as a sort of argument to shew that a person does not entertain a design imputed to him, because, in general, it is not likely that a man will entertain a design which there is no probability of his executing; but if you find from the evidence that he is actually embarking in that design, and declaring that he entertains it, there is then no room for the argument, which might otherwise be adduced, as to the improbability of its success; if you find he was embarked in it, the improbability of success makes no difference in the crime. They expected, as it appears, a much greater force to assemble than did assemble; they were acting, probably, on some delusion, whether at the instigation of their own immediate friends, or of others, is not material;—the question is not, whether they had ground for hoping for success, but the question is, did they, or did they not, and particularly, did the prisoner at the bar, engage in the acts imputed to him, with the design charged by this indictment, namely, the design of endeavouring to overturn the Government?" These expressions apply strictly to the case now in hand, and they come from such high

authority, that I should think it was wasting your time if I said another word upon the subject.

In concluding, I have now to demand at your hands a verdict of Guilty against this unfortunate man; and certainly I would not ask this verdict if I did not think I was entitled to do so. I consider such a verdict as of the last importance to the country—but it is your verdict, not mine. You will judge the case with all the favour the panel is entitled to; but you will at the same time keep in mind what is due to the oaths you have taken, and to the peace of that kingdom of which you are subjects. Fearlessly, yet with mercy, I am persuaded you will do your duty; and as the result will be gratifying to your own minds, so it cannot fail to be satisfactory to the Court and to the country.

SUMMING UP.

Lord Justice Clerk.—Gentlemen of the Jury, the evidence in this case being now gone through, and the observations upon that evidence, on both sides, being closed, it is my province, in the discharge of the duty incumbent upon me, to submit to your consideration those observations, with that view of the evidence which it is my peculiar duty, in a case of this description, to lay before you, which may be of use to you in forming that conclusion, which it is your undoubted privilege to do, on a review of the whole of the case.

The prisoner now at the bar is charged with the highest crime known in the law—the crime of High Treason, which is considered as the highest crime, in respect that it includes within it an accumulation of every species of evil, both public and private; inasmuch as it is impossible that the crime of High Treason, which must result in the destruction of the Government and Constitution of the country, as by law established, can be accomplished, except by bringing in its train evils of the most general and extensive nature. The indictment on which the prisoner has been arraigned, and

has pleaded, and continues to plead to you, not guilty, contains four distinct charges. The charge of compassing and imagining the death of the King, is the subject of the first count; the charge of levying war against the King, is the subject of the second count; the subject of the third count is, the inventing, devising, and intending to deprive and depose our Lord the King from the style, honour, and kingly name of the imperial crown of this realm; and the subject of the fourth count is, the compassing, imagining, inventing, devising, and intending to levy war against our Lord the King, within his realm, in order, by force and constraint, to compel him to change his measures and counsels.

Now, Gentlemen, it appears to me, in the view that I take of this case, and, indeed, in the view in which it has been considered by the Public Prosecutor himself, that it is quite unnecessary for you to occupy your attention with any consideration of the first of these counts; and I hold it, in the view that I take of it also, to be unnecessary for you to enter on the consideration of the third count. It is to the second count—the levying war against the King, and the fourth count—the compassing, imagining, and devising to levy war against the King, in order, by force and constraint, to compel him to change his measures and counsels, to which it is necessary for you to pay attention, in the consideration of this case.

In proceeding, then, Gentlemen, to explain to you what is the rule of law with regard to an indictment of this nature, I need not, I am confident, warn you against any prepossessions which you may be supposed to entertain, from any thing that you have either heard out of doors, or which you may have learnt in the course of the proceeding, which took place in this Court yesterday; that case has been alluded to to-day, and once or twice it has been made the subject of comment by both of the counsel who addressed you, but who agree that you are to lay that case, and the result of it, entirely out of your consideration, in determining upon the present case. You are to approach this case, as I am confident you have approached it, and will continue to consider and decide upon it, coolly, deliberately,

and dispassionately, arresting your attention upon nothing on the face of the earth but the evidence which has this day been given before you.

But before I proceed to call your attention to that evidence, I wish to state to you distinctly what I consider (and I shall do it as far as I possibly can from authorities) to be the real law applicable to such an indictment as this. You know perfectly well, that the law applicable to High Treason is a law borrowed from the law of England—from a statute, passed at an early period of the law of England, with reference to the second count, but a British statute, as to the fourth count; but any authorities we are to look to, of weight and importance, in considering the law, are to be found in the authorities of the law of England, which, by the Treaty of Union, has been declared to be the law of Scotland in all time coming, with regard to the crime of High Treason.

Now, Gentlemen, the second count in the indictment—that of levying war against the King in his realm, is laid upon the statute of the 25th Edward III. which, in plain and simple language, declares, "that if a man do levy war against our Lord the King in his realm, or be adherent to the enemies of our Lord the King in his realm, giving to them aid or comfort in the realm, or elsewhere, and thereof be proveably attainted of open deed by the people of their condition," that is High Treason. Now, Gentlemen, in considering what it is which, in this short provision, falls within the enactment of High Treason, it is proper to look to what is the result of the adjudged cases which have occurred, in which the question has been agitated, as to what was a levying of war; and the result of these cases, as they have occurred prior to the date of the treatise to which I am to refer, that of Foster, is to be found embodied in his works, to which I direct your attention, as preferable to any words I could use, and to which I refer in preference to modern authorities, however weighty they are, as expositions of the same rules of law laid down in this treatise, and to the justice and accuracy of which, particularly that read by the Lord Advocate, as the opinion of the Chief Justice of England, I most completely subscribe; but I prefer to read the result of former authorities, and which are mere-

ly to be considered as embodied and given effect to in the opinions of the several Judges, the Lord Chief Justice of the King's Bench, the Lord Chief Justice of the Common Pleas, and the present Lord Chief Baron of the Exchequer in England, who merely expound that which had been laid down before in the authority of Mr Justice Foster. Now, his words are, "But every insurrection which, in judgment of law, is intended against the person of the King, be it to dethrone or imprison him, or to oblige him to alter his measures of government, or to remove evil counsellors from about him, these risings all amount to levying war within the statute, whether attended with the pomp and circumstance of open war or not;" and then he goes on to state, which is not material for you to consider, in reference to this count of levying war, but which would be material with regard to the other counts, "that every conspiracy to levy war for these purposes, though not Treason within the clause of levying war, is yet an overt act within the other clause of compassing the King's death, for these purposes cannot be effected by numbers and open force without manifest danger to his person." He proceeds, however, and he explains himself more fully in these words: "Insurrections in order to throw down all inclosures, to alter the established law, or change religion, —to enhance the price of all labour, or to open all prisons,— all risings in order to effect these innovations, of a public and general concern, by an armed force, are, in construction of law, High Treason, within the clause of levying war; for, though they are not levelled at the person of the King, they are against his Royal Majesty, and, besides, they have a direct tendency to dissolve all the bonds of society, and to destroy all property, and all government too, by numbers and an armed force. Insurrections, likewise, for redressing national grievances, or for the expulsion of foreigners in general, or, indeed, of any single nation, living here under the protection of the King, or for the reformation of real or imaginary evils, of a public nature, and in which the insurgents have no special interest, risings to effect these ends by force and numbers are, by construction of law, within the clause of levying war, for they are levelled at the King's Crown and Royal dignity."

Gentlemen, I shall just read one other authority, which,

in fact, when duly attended to, is strictly conformable with what is more authoritatively stated in the passage I have read from Justice Foster; for my Lord Hale, one of the greatest and most eminent of the English lawyers, states, "But if divers persons levy a force of multitude of men to pull down a particular inclosure, this is not a levying of war within this statute, but a great riot; but if they levy war to pull down all inclosures, or to expulse strangers, or to remove counsellors; or against any statute, as, namely, the Statute of Labourers; or for enhancing salaries and wages, this is levying war against the King, because it is generally against the King's laws, and the offenders take upon them the reformation which subjects, by gathering power, ought not to do." Such are the authorities of the text writers upon this important part of the law—authorities which are acknowledged as most important and decisive, and have ever been so in every question of Treason which has come under the consideration of any court of justice; and I shall just add one word more, in the language of Lord Chief Justice Holt, in a case in which a multitude had risen for the purpose of pulling down all the Meeting-houses in the city of London, and in which they had proceeded, without being regularly armed, farther than having crows and firebrands in their hands; in that case, he expressly says, "when a multitude is assembled, and force used, not for any private end or revenge, but upon a pretence which is public and general, it has, in all ages, been adjudged a levying war against the King."

Gentlemen, with regard to the fourth count, the law is clearly and distinctly defined in a statute which has been alluded to, passed in the reign of the late King, and which declares, "that whosoever shall, within the realm or without, compass and imagine, invent, devise, or intend to levy war against our Lord the King, within his realm, in order, by force and constraint, to compel him to change his measures and counsels, shall be deemed guilty of High Treason." This, then, Gentlemen, is the law applicable to the counts of this indictment, to which your attention is to be directed in considering the evidence, namely, the count which charges the actual levying war against the King, and that

which charges the compassing, inventing, and intending to levy war.

Gentlemen, the evidence which has been adduced it is my duty now to bring under your consideration; and though I shall certainly feel it to be necessary, in a case of this great importance, not only to the prisoner at the Bar, whose life is certainly at stake, but to the public at large, to bring it fully and completely under your view, I do apprehend, from the nature of the examinations that have taken place, it will not be necessary for me to refer to some of the depositions, more than to bring them generally under your view; because they only go to confirm others, which give a more general account of the transaction, and do not throw any additional light on the question.

In the first place, Gentlemen, you will find that Lieutenant Hodgson, of the 10th Hussars, stated to you, that he arrived at Kilsyth about half past five in the morning of the fifth of April, accompanied by a squadron of the 10th; that he went from Stirling that morning; that in about an hour and a half, or about two hours after, he proceeded from Kilsyth on information he had received from Cooke, one of his men, and that he also had seen a Mr Baird, and got information from him, which led him to set off; that he proceeded, with sixteen of the 10th Hussars, and about sixteen of the Yeomanry, and amongst them ten or eleven of the Hussars, mounted on the Yeomanry horses, as the witness himself was; that the reason of quitting their own regimental horses was, that they had had a very quick march in the morning, and he wished as much as possible to save them—the march had been from Stirling, and was a forced one; that from Kilsyth they proceeded in the direction of Falkirk, and received information from the country people in what direction a party of armed men were gone; that he marched to Bonnymuir; and when they had proceeded about nine miles, he saw about twenty armed men, at a quarter of a mile distance, armed with long poles, or pikes; that they were on the muir, about fifty yards from a wall; that when they came in sight, they went a little quicker—they put their horses into a canter, but the ground was bad, and they were obliged to go round; that

the men cheered at the time he saw them, but he does not know whether that cheering was in consequence of consulting together; that it appeared to him not to be the spontaneous impulse of the moment, but the result of a private conference.—Here is this gentleman stating, that, in consequence of information of a set of armed men proceeding along the public road, he went in pursuit of them; that he saw them; that they appeared to see him; that they cheered, and came down to this wall; and that he considered, from the mode in which they drew together before they moved off, that it was in consequence of seeing the cavalry near; that they were about a quarter of a mile off; that after the cheering, they ran down towards him, and stationed themselves under the wall, and waited till he came up—that by so doing they came nearer to him; if they had wished to have avoided him, the men should have gone the other way—he could not go straight over the muir, that it was boggy, and that one of the Yeomanry directed them; that he knew the ground—they had to make a turn rather to the left; he thinks they might have escaped very easily by running away when first they saw them; the ground was so bad, he could not have taken more than one with his men—the main body would have escaped, or they might have thrown away their arms, and then they could not have been identified. Now it is material for you to consider well the account this gentleman gives, and you will consider whether there is any doubt that these persons, seeing him approaching, came pouring down, and took up this position, which you will find that gentleman, as well as other witnesses, state, was an important position to take, and which might have been resolutely retained, at the hazard of all those who were trying to apprehend these persons. In short, it was a military position, taken on this marshy ground, which persons, meaning to make a firm stand, would naturally have taken as their position. The witness then states, that "upon coming within fifty or sixty yards of them, they fired two or three shots; he was in front of his party, and was advancing towards the wall, at the time they fired; he was not advancing in very regular order, the ground was so bad; he was not the only person exposed in

front—there were two or three in a line, very near him;—and so bearing down, this fire took place; he cannot say from what pieces the fire took place, whether muskets or pistols; he fancies that they were rested on the wall—he could only see their heads. That was a very good military position. Before he reached the wall, two or three shots were fired by different people, two or three yards from each other. The body were principally armed with pikes, and two or three muskets. At that time he kept advancing, and spoke to them, and ordered them to lay down their arms;—this he did six or seven times, loud enough to be heard by the whole of them—he is positive of this; they did not lay down their arms, but ceased firing; at the same time he ordered his own party to cease firing. He went with his party through the gap in the wall, their party being on the right, at the corner of the wall; their pikes and one musket were presented to him and his party—he is positive the pikes were presented as infantry would receive cavalry in action." Now, this I apprehend you will also consider as material, in regard to the position taken—the way and manner in which preparation was made to receive the cavalry, and the manner in which they were received; it is important, because it comes to this, that this was an intended meeting—it was not an accidental rencontre; they came from the height to the wall, they saw the cavalry advancing in that direction, they were prepared to receive them, and did receive them with their fire. Then he says, "the way in which they were presented was calculated to resist cavalry, but not the way in which the men were placed—if they had been closer together, they could have made more resistance." You will consider whether that may not be accounted for by the smallness of the number they had to line this wall in the way which appears; "they resisted as far as they could in their scattered state; the person who appeared to be the leader of the party presented a short musket at him; from the time he first rode up to the wall it was presented at him, and continued so the whole time; he followed him with his eye, and his piece; he moved on, and kept his piece pointed towards him; when he pointed at him, he was at first about twelve

yards from it, and afterwards about two yards off; Baird is the man—that he has no doubt of; he does not remember saying any thing to him; he endeavoured to fire his pistol at the man, but it flashed in the pan, and did not go off—he must have been killed if it had gone off; he does not know whether the man drew the trigger of his piece or not—was wounded through his hand, but does not know who wounded him, as he was engaged with another man at the time; there were two on one side of him, and he was engaged with one on the other side; the two thrust at him at the same time; the only wound he received was in his right hand; his horse was wounded by the other man, close to the quarters, in the ribs, and died that night." Then he says, "The attack was general, and we attacked them; Serjeant Saxelby was wounded in two places; the conflict did not last long after this; we were in the middle of them, and they threw away their arms, and some ran away, and others remained; some shots were fired during the conflict after going through the wall, I do not know from which party; Baird was taken, but I did not see him taken, for I had passed him, but when I turned round, he was standing without arms, in charge of the party; I saw him upon our first arrival, and I kept him in my eye from that time, until I got through the wall, and snapped my pistol." Then he says, "he was induced to take him to be leader, from what he observed; he thinks he was in the centre of the party, but is not positive; he ascertained other persons among them, whose names he has heard since; he saw them in Edinburgh; he saw Hardie immediately after he was taken; he accompanied them part of the way to Kilsyth; he saw Hardie walk arm-in-arm part of the way with Baird, and they appeared to be great friends." Now, Gentlemen, you will take this into your consideration, in reference to the Address; you will see, from the evidence, that it seems to attach particularly to Hardie, and you will consider whether it does not thereby attach to this prisoner, who is proved not only to have been engaged in the conflict with Hardie against these troops, but who is proved to have walked arm-in-arm with that man, and convinced the officer that they appeared to be great friends.

Then he says, "that Murchie, Gray, Hart, and Johnston the boy, were some of them; they were actively employed; the men lodged in Stirling Castle were all taken in that field, eighteen in number, and one was left on the field so much wounded, that he could not be removed; Cooke came to Kilsyth that morning; before we quitted it, he shewed him an Address, signed by order of the Provisional Government; he returned it to him, and got it again, about a mile from Kilsyth, before they got to Bonnymuir; he kept it that day, and in the evening gave it to Colonel Taylor, who commanded the regiment; he went the same day to Glasgow, to report it to the Lord Advocate and Colonel Taylor; the next morning he received it from him again, in consequence of a communication from the Lord Advocate." The Address is then shewn to him, and he says, "that is the Address he received from Colonel Taylor; he looked at it when it was first given to him, and he had seen a copy in Stirling the day before, which had been posted up. He is quite sure he gave Colonel Taylor the paper he got from Cooke; and has every reason to believe he got back the same paper from Colonel Taylor. He believes it is the same he got from Cooke, but cannot swear it, from its being a few hours out of his possession. It is the same sort of address; he saw the signature at the beginning, but did not read it through. He does not think he read it after he received it the second time—they were going very quick, and he put it into his sabre-tache, but did not read it then, although he thinks the whole, or a great part, was read by him and Colonel Taylor. The Colonel wished for a copy, which he gave him, either that night, or early in the morning. He accompanied the prisoners taken at Bonnymuir half a mile to an inn; he then stopped to write dispatches, and overtook them again before they got to Stirling. The arms taken were lodged in the Castle, at the same time with the prisoners; there were sixteen pikes, a pitch-fork, a pike-handle without a head, five muskets, and two pistols. He did not see any ammunition taken in the field; but he saw a bag of ammunition, which he was told Serjeant-Major Warren had taken."

Now, Gentlemen, this is the evidence which this witness gives, as to the document which he received from Cooke; he got that document first, and returned it to Cooke afterwards, but it was again restored to him by Cooke, on the road to Bonnymuir; he kept it from that time till the evening, and he delivered it at Glasgow to Colonel Taylor, who expressed a wish to take a copy of it, and it was in his possession that night, or for a part of the next morning; in short, he got it back from him, after it had been a few hours out of his possession. Now, you are to consider whether or not this gentleman, stating to you that he has reason to believe, and does believe, that this is the identical paper that he received from Cooke, and that it is the same paper that he gave to Colonel Taylor, and received from him again—it is for you to consider, whether the becoming caution which this officer observed in adding, that, from its being a few hours out of his possession, he could not swear to it, ought to create any reasonable doubt in your minds that the paper to which he spoke was the identical paper given to him by Cooke,—that is a point for your consideration; for you have heard it ruled by the Court, that, from the evidence exhibited to us in the testimony of this gentleman, it appeared proper that this should go for your consideration. You are to consider, first, the evidence of Cooke, to which I shall refer, which establishes the identity of the paper. You are to keep that in view, when you come to consider from what quarter it was that the paper was acquired by Cooke, which he swore he delivered to this person, Lieutenant Hodgson; and whether there is any ground to doubt that this paper, given by Lieutenant Hodgson to Colonel Taylor, and believed by him to be restored back from Colonel Taylor to him afterwards, is the identical paper which has been read to you. The evidence is sufficient to bring it under your consideration. Undoubtedly the opinion of the Court, as to its admissibility, did not decide that effect was to be given to it, unless you were satisfied of that, and the other point, to which I shall direct your attention when I come to the examination of Cooke.

Upon cross-examination this gentleman says, "there went with him sixteen of his own regiment, and he thinks about the same number of Yeomanry, armed with pistols and swords. He says, from the observation he had, the party on the hill amounted to about twenty. There were nineteen that they took. Did not know of any escaping. The greater part of what they saw they took, of those who came down the hill. They went with a view of taking them. He called repeatedly when he came nigh, for them to surrender, and lay down their arms; in answer, he thinks, the word "treat" was used, and two or three other words; "we will treat with you," or "will you treat with us?" or some such thing, was added. Positively, it was not Baird who used those words; it was some other man of the party. He thinks Baird levelled his piece at him from the first time he observed him, and continued to keep him in his eye, when the wall was between them, until after he got through the gap, and presented his pistol. Nothing passed between him and Baird. He had surrendered when the witness turned round, and was standing without any arms in his hand. A very short time elapsed before it was all over. There were some shots fired before he fired, and before he called to the men to lay down their arms, but none afterwards, until the skirmish, when they came to close quarters, and then there was some firing, but he cannot tell from which party."

Then, upon being re-examined, he says, "they were not fully armed when they set off, as they were not with their own horses; that there is a great difference between their horses and the Yeomanry horses. A military man can distinguish with his eye a troop armed with carbines from a troop without carbines. His regiment is particularly well mounted; five or six had their own horses." Then, in answer to a question from one of you, Gentlemen, he says, "they were about a quarter of a mile distant when first they cheered; there was no cheering on the part of the Yeomanry upon that occasion. They were nearly a quarter of a mile off when the cheering took place." And you observe this, Gentlemen, that he says there was no cheering of his

party, or from the Yeomanry, and it was entirely on the part of the prisoner and his party; all this cheering in coming down to the wall proceeded from the party coming down the hill, and in no respect from the Hussars or the cavalry.

Lieutenant Davidson, of the 10th Hussars, confirms this gentleman, as to going out with the cavalry in search of a party of people, on the 5th of April last, about half past eight. He says, "they went along the road till they came to Bonnymuir, about four miles from Falkirk; they then went off the road. They saw the people first, about half a mile off, on the muir; they advanced, and when they got pretty near them, they came down from the height, and took a place behind a stone wall. When they began to move, they were about a quarter of a mile off. Some of them took off their hats, and appeared to be cheering—they waved them in the air around their heads. He heard a sort of sound, but could not say what it was. They then came down, and took a place behind this stone wall, and remained there until his party came near them. When about seventy yards off, they fired two shots over the wall. There was no firing from his party before this." Here, therefore, is additional testimony to that fact, that the firing commenced from those parties who came to the wall, and in no respect was begun or provoked by the dragoons or the yeomanry. Then he says, "that his party rode in a gallop, as fast as possible, close to the wall, and then went through a gap in the wall; and at that time Mr Hodgson desired them to lay down their arms, which they refused to do, and attempted to prevent his getting through the gap with their pikes. About eight of them, he thinks, formed at the gap, and attempted to prevent their getting through. Some of them were upon their knees, and received his party as infantry do cavalry, and as if trained to it." Gentlemen, you will consider whether that is not a circumstance deserving your attention, in the inquiry you are to make, that this gap in the wall was obstructed by these persons, armed with pikes, kneeling on one knee, in such a position as satisfied this gentleman they had been trained to that duty. Then he says, "Each man kneeled upon one knee. We

passed through the gap. Baird appeared to be the leader of the party—he was at their head, with a blunderbuss, or short gun, in his hand, levelling it at Mr Hodgson; this was immediately after we got through the gap, and he continued to present it for some minutes. Mr Hodgson drew a pistol from his holster, which he presented at Baird; it flashed, or snapped, but did not go off. After we got through the wall, we made a kind of charge at them, and they gave way. Murchie was there, and M'Culloch also." Then he points to the boy Johnston, and says, "he was there, and that when first he saw the boy, he was lying down among the heather—this was after the business was over; the boy pretended to be dead, or asleep; the witness told him to get up, and he did so. He remembers seeing Hardie there; he was taken prisoner, and brought, with the rest, to Stirling; he came with them. One wounded man was left on the field. A good number escaped. There were a number of pikes, and some muskets and pistols, and a pitch-fork taken, and some ammunition, in a whitish-coloured bag, some ball-cartridges, and powder. He saw some of the prisoners searched, and they had each three or four ball-cartridges in their waistcoat pockets. The arms and ammunition were lodged at the Castle. He would know some of the arms again." And then he identifies some of those pikes and some of the muskets, now on the table, particularly that short gun—he knew it from its appearance, and saw it in the hand of Baird, presented against Lieutenant Hodgson.

Robert Bowler is examined, and he says he belonged to the 10th Hussars in the beginning of April last; and he gives the same account about setting out in this pursuit. Then he says, "Baird is the man Lieutenant Hodgson addressed; he then levelled his piece at Mr Hodgson, but it did not go off—this was after he had desired them to lay down their arms, and before we got through the wall. After this some of our own men fired at the gap, and Lieutenant Hodgson and the cavalry got through. My attention was directed to a lad, of the name of Johnston. I did not see the man, after getting through, who had levelled at

Lieutenant Hodgson. When I observed him previously, and when his piece did not go off, he went up to the wall, and appeared to be striking it upon the wall; but whether he knocked the cock off it afterwards, I cannot say. He afterwards struck one of the soldiers with the butt, directly upon his getting through the gap. I was not through the gap myself, but I saw it done. Baird was near the gap at the time. I did not observe whether he drew the trigger when he presented the gun at Lieutenant Hodgson. He went to the wall immediately after the musket was presented. He got hold of it by the barrel, and was knocking the catch of it on the wall. I do not think he was in the attitude of a person who appeared to be sharpening the flint, but he appeared to be knocking the cock off, so that it might be of no more use." This is the observation of this man; but it is important to observe, that this gun, which Lieutenant Hodgson swore he saw in the hands of this person, levelled at him, is the identical gun, and the cock is not knocked off. He says, "He did not observe whether the trigger was actually drawn; that the gun was thrown down, in consequence of its not going off; and that the prisoner at the bar betook himself to another weapon. Two men were on each side of the gap, with pikes, one higher than the other, in a direction" (which he describes) "so as to keep them out—the pikes were slanted across the opening. The occasion of their party firing was to enable them to get through. There was a lad that fired several times after they got through the gap, which lad he points out to you to be the prisoner Johnston. He saw the whole of the other prisoners at the bar in the field, without arms—the chief part of them carried them as far as they could, and when they found they were near being overtaken, they threw them down, and then they were taken prisoners."

William Saxelby says, he is a serjeant in the 10th Hussars; and confirms the account the others give us as to setting out in this pursuit. He says, "they were about a mile off when he first observed them; part of them were in motion, part of them were standing. After some minutes, they advanced towards his party; they ran and ranged themselves

behind and alongside the wall, in a line of about 100 yards. They outflanked his party, which could only come by files, from the nature of the ground. When they were about thirty yards from the wall, the party behind it fired; it was a straggling sort of firing, two or three shots at a time. In the whole about eight shots might be fired, and then they rode close to the wall. No shots had taken place on his part before that." Then he says, "we shewed no front till we came to the wall; we might extend ten or twelve yards alongst the wall, but no proper front was shewn. My officer and myself were at the head. He ordered them first to lay down their arms; I repeated the order; we were near enough at that time for that order to be heard by the whole party behind the wall. The shots were fired by fowling-pieces, muskets, and pistols. Some had muskets and pikes too when the officer addressed them. We were within reach of their fire. I was wounded in the arm by a pike after I got through the wall, and I received a slug-shot in the body. The officer got through a gap in the wall, and I followed him. We were resisted by the party on our approaching the gap, by the presentment of pikes, and muskets covering them. The pikes were used by these men kneeling down in the gap, and it was not practicable to get through without clearing it of the men before you. Then, he says, "the men with muskets were standing presenting, to fire if any one attempted to go on. They were on the level for firing; when they made the attack upon the gap, none of those muskets were fired. He received the wound in his arm, in the attack upon that place, from one of those pikemen, who attempted to dismount him from his horse; it was not through his arm, but observable on the other side, and done with force. He received the shot-wound after that. Remained in the field. The pike-wound was in his sword-arm. He has since seen the man who wounded him with the pike. Baird is the man; he was one of the three who defended the gap. On his officer entering the gap, Baird presented his piece close to his side, and finding it did not go off, he threw it down, and took a pike in his hand; a pike which was lying on the ground. He is quite sure that he saw him

level the piece at his officer, and act as he has described. He had not seen Baird before he levelled his piece. The party got through notwithstanding the obstruction. He is quite sure that Baird was the man that wounded him, and levelled the piece at his officer. Cannot fix on any others but Moir; all the men brought to Stirling were taken prisoners when he left the place. He took none, being disabled by his wound. After finding himself getting very weak, he went aside, and rode away."

Upon his cross-examination he says, "the man who struck him was at the entrance of the gap. He was hurt in going through. Lieutenant Hodgson had got in at this time; but whether he had passed the same man the witness cannot say. He was the first one that followed him, but was not close up with him. When Baird levelled his piece, Lieutenant Hodgson was through, and the witness was outside."

Upon being re-examined, he says, the officer was first through the gap, and the levelling of the piece took place directly afterwards. It would not go off; he threw it down, and took up a pike before the witness got through. The officer was received by levelling the musket, and the witness by an attack of a pike upon him. He then stated, to a question I put to him, that he saw Baird draw the trigger when the gun was levelled at his officer.

Now, Gentlemen, you will consider, from the evidence thus afforded by the testimony of Lieutenant Hodgson, Lieutenant Davidson, Bowler, and this person, whether or not, in that party who came down to the wall, the prisoner at the bar was the leader, the commander, and the controller of the whole? They concur in stating, that, from his acts and deeds, they drew that conclusion; and you will consider, from the nature of the evidence, whether such was the part he took. It is proved, that he drew the trigger, that his piece failed in going off, and it was only on its failing to fire, that he threw down his musket and took a pike; and, though it is not proved that he used it against the officer, he used it against this witness in going through the gap, and he was the person who inflicted that wound in his arm,

which almost penetrated through it, being observable on the other side. Those are the circumstances which attach to the conduct of the prisoner in general; and it is for you to say, whether you have any doubt, that there was a deliberate purpose of coming in contact with, and opposing the cavalry. There was no manifestation to avoid the cavalry, which they could have done if they had wished; but they deliberately waited for a convenient moment to receive them, and they resisted in a manner which led these witnesses to state, they appeared to be men trained to the use of the pike.

I will not read the evidence of Warren and John Davidson, the two next witnesses, because they go to the same point, and concur in stating, that they observed a short man, with a short gun that was fired; and that there was a haversack taken off Baird in their presence, but that it contained nothing at the time. This is the haversack which John Davidson and another witness state, they afterwards saw, containing some cartridges and some powder, but it was cartridges and powder collected from persons searched on the spot; but this bag originally was upon the person of Baird, the prisoner at the bar, taken off his person at the time, and made use of to put the ammunition in.

Thomas Cooke is a soldier of the 10th Hussars, to whose testimony I generally alluded; and I think it necessary you should particularly attend to the whole testimony of this witness, for I apprehend you can have no difficulty in thinking the facts he discloses are most important to the question you have to consider. If you are satisfied there has been a levying of war—that there was actually a war levied in the sense of the authorities I have read—the purpose of that levying is what you are to consider—Whether it was a private purpose, for a private revenge, or for some private end, or a public purpose that they had in view, namely, the subversion of the government and constitution of the country, and thereby affecting the King himself?—and in that view the testimony of this witness appears to be most important and material, for I apprehend you will dis-

cover from it a purpose, on the part of these persons, to avail themselves of any knowledge they thought he might afford them; and it is for you to consider, whether it is referable to any thing but the important purpose which, it is charged, these persons had in view. You will also find there was an attempt made to deprive this person of his arms, which he was entrusted with by royal authority for the service of the state, and that there was also a direct and deliberate attempt made, and proceeding adopted, for the purpose of seducing him from his allegiance and duty, and making him the instrument of seducing others of the same regiment to which he belonged; and now, Gentlemen, attend to the evidence which this witness has given. Thomas Cooke belonged to the 10th Hussars.—"He was at Stirling, in the beginning of April, with part of his regiment. He had occasion to follow a squadron on to Kilsyth, on the morning of the skirmish at Bonnymuir. As he was going along the road, about eight o'clock, he was stopped on the road by five or six men. They had pikes, guns, and pistols, and one or two had a sword; each man was armed, and some were doubly armed. They met him about half way between Kilsyth and Stirling. He knows the road from Kilsyth, by Falkirk, to Edinburgh; there are some inns, and it was further on from the inns;" of course it was more to the westward, and the public-house, leading from Kilsyth to Falkirk, was more to the eastward. "There was a turnpike there; it was beyond the turnpike the men were formed up, when he first saw them, right across the road, and the road equally divided." There was one person on the left; and he stated to you, upon his oath, that that person was Hardie, of whose fate you are aware. He then goes on to state, "that the party was dressed to the left by Hardie. They stopped him, and ordered him to halt. When he came within about twenty yards of them; he did not halt, but rode up to them, and they directly took and surrounded him. Some had hold of his horse's head; there were some on one side, and some on the other; they asked him for his dispatches." It is for you to say, whe-

ther you can entertain any doubt that, if he had acknowledged he had dispatches, they would have allowed him to pass in possession of them. "He told them he had no dispatches. Then they asked him for his ammunition; and one man in particular wanted to take his arms from him—a tall man, dressed in a black coat. They did not take his arms from him, as he told them he was a friend to their cause, that he was a weaver himself. They had not told him what their cause was, only that they were seeking for their rights, as honest men ought to do." It is for you to say, whether you can from this statement, which the witness swears was uttered by one of these five or six persons, of whom Hardie, the person tried yesterday, was one, who was acting as their leader—forming them by their left across the road—ordering the soldier to halt—asking for his dispatches and for ammunition—it is for you, Gentlemen, recollecting that one of these persons stated, that they were there seeking their rights as honest men ought to do, to say, whether you can, upon any principle of construction applicable to a faithful discharge of your duty, draw the conclusion, that these persons were here upon a private individual purpose—either an object of their own, or for any private revenge—or whether these words do not amount to an express declaration, that it was in furtherance of the great public purpose of seeking what they were pleased to call their rights, that they made their hostile attack upon a soldier of the King, then, in the performance of his duty, passing along the road. "Then he said, he was friendly to their cause, and hoped they would not molest him; they shook hands with him, and asked him if he could read. He told them, yes. In consequence of that they gave him a hand-bill, which one of them took from his packet, and from a roll apparently of the same sort; and, he says, as far as he could judge, rolled up as hand-bills usually are; there appeared from fifty to a hundred; he did not notice whether it was wet, as if it had been newly printed, or not. They said, every thing in it was true; and they told him to read it, and to take it and show it to

his comrades. They said no more to him about it. He looked at it before he left the party; he saw at the head of the hand-bill, it was "An Address to the Inhabitants of Great Britain and Ireland;" it was dated the 1st of April, 1820, but he did not observe whether it was dated from any particular place." Now, Gentlemen, attend to the fact which this man swears to,—that one of these five or six persons, connected with whom Hardie was, takes out of his pocket a roll, apparently all of the same description of papers; takes one off that roll, puts it into the hands of this witness, desires him to read it and shew it to his comrades; and he states to you that it was entitled, "An Address to the Inhabitants of Great Britain and Ireland," and that it bore the date of the 1st of April, 1820,—and see whether you can entertain any doubt, that this person, armed as described, taking the daring step of stopping this soldier, and endeavouring to obtain from him what the witness stated, and communicating this paper to him, was in possession of from fifty to a hundred copies of these addresses, of the nature of which you are apprized. I say, it is for you to determine, in the discharge of your duty, whether you can entertain any doubt upon the face of the earth, that it is here established in a satisfactory manner, that those persons, one of whom is proved afterwards to have been taken in the field of Bonnymuir—to have been engaged in arms—and to have done his best to resist the troops, armed in the manner in which they were, and acting as they were, were not furnished with copies of what no man can hesitate to pronounce to be, as indeed it is admitted to be, one of the most treasonable publications that ever issued from any press whatever. The witness goes on to say, "That he made no remark to them upon it; he looked at it again after he passed. After that he went towards Kilsyth; at least he says he went to a public-house first, and had a glass of spirits. He saw his commanding-officer, Lieutenant Hodgson, at Kilsyth, and gave it to him and Mr Davidson together; they gave it back to him immediately. It did not continue in his possession; but he gave it to Mr Hodg-

son again before he came to the place where they stopped on the road." This, then, Gentlemen, is the history of the paper, which I have already observed on in the testimony of Lieutenant Hodgson; and it is for you to say, whether there appears to be any reasonable doubt, that it is sufficiently traced, as the actual paper got by this man from one of those persons who obstructed him—and that he delivered it to his officer—who, though he spoke with becoming caution, stated, on his oath, that it was, according to his belief, the identical paper. The witness says, they were all round him when he got it, and saw it given; that he could not be mistaken, because they surrounded him; therefore, you have Hardie present and looking on at the time when this paper is handed out of the pocket of one of his associates, and delivered to the soldier for his perusal and dissemination amongst his companions. You have that proved in a fair manner by the testimony of this witness, and not a syllable has been said to impeach his testimony; and then, Gentlemen, comes the question, whether, in reference to a case of this description, where the charge is a levying war against the King, or a conspiracy to levy war, as stated in the Fourth Count, to compel the King to change his measures and counsels, it is not a part of the evidence as affecting the prisoner at the bar himself? I have no difficulty in saying to you, that, considering the place where this interview took place—its being on this high-road—its close vicinity to this very place at Bonnymuir—the shortness of the interval between the time when the soldier was met and received this document, and that when Hardie is found joining and actively engaged with the others in arms in that levying of war—that the acts and deeds of Hardie, or of those with whom Hardie was then engaged, if sufficiently proved, to your conviction, to have taken place, are matters that go to affect the prisoner at the bar, as indications of the general purpose in which they were all engaged at the time—the general undertaking for which they were armed and accoutred, and which afterwards resulted in an actual attack upon the King's troops,

to the effusion of their blood, and to the danger of the lives of many of them. I repeat, it is a fit subject to go to your consideration; and I have no difficulty in saying, if you believe this paper to be identified, that is a matter which is also deserving of your consideration, as affecting the guilt or innocence of the prisoner, in so far as the question of his real purpose is now under consideration.

Gentlemen, you have afterwards the evidence of Mr Hardie, a magistrate, to another copy of this paper, which is admitted to be, and which I have no difficulty in saying is, a treasonable paper. His evidence is material, in reference to the other copy of that paper. He tells you, he is an acting magistrate of the county of Lanark, which includes the city of Glasgow, and that he has been so about three years: "That he was examined as a witness in the case of Hardie, who was tried yesterday: That he saw Hardie at Glasgow in the course of Sunday, the 2d April last, at a few minutes past eight; he saw him in Duke Street, in company with twenty or thirty people; they were standing about a watchman's box, and one individual reading aloud an Address pasted on it. On getting up to the party, he stopped; he heard what was read, and took means to ascertain that it was read correctly and faithfully. Those standing round could hear it read. He made his way through the mob for the purpose of taking it from the watch-box, but was prevented by several individuals composing that mob; they were active, to the number of five or six, in preventing him. That since that time he has seen one of the five or six, namely, Hardie. That he did not know any of the rest. Hardie obstructed him in the attempt to take it down; he got between him and the box, and hustled him off the pavement by force; he took him by the neck, and the others assisted him. Witness told them that he was a magistrate, that it was a very improper Address, and he insisted on having it down. This was after he was hustled off; no words had passed between them before. He then made a second attempt, but Hardie seized him round the body, and threw him off the pavement a second time, and said, he would lose the last drop of his blood sooner than he would permit him to take down

that paper." It is for you, Gentlemen, to judge, whether or not there is the least foundation in reason for the supposition which has been ingeniously made to you, that mere innocent curiosity, a wish to read out this document without interruption, was all that led to the interference of Hardie, in thus obstructing the magistrate—in throwing him violently from the pavement—and concluding the whole by declaring, he would lose the last drop of his blood sooner than let it be taken down. If you, Gentlemen, can arrive at so extraordinary a conclusion, you certainly cannot be prevented; but I apprehend you have heard nothing, able as that address was, that can convince you, that, without a most extravagant stretch in favour of this innocent purpose, such a conclusion can be drawn. The witness is confirmed in all this by the testimony of Mr Stirling, who swears that he was obstructed violently, which is reconcileable only to the warm interest which Hardie took in the address; and this you will not be much surprised at, when you attend to the fact established by Cooke, that Hardie is afterwards seen drilling and commanding, I may say, six or seven persons, one of whom is in possession of from fifty to a hundred copies of a paper with the same address. It is for you to judge, whether it is not proved to be a copy of that address delivered at the time when he is proved to be parading the public road with arms, and stopping one of the King's soldiers. But Mr Hardie goes on and says, "He gave up the attempt in consequence of the above obstruction; that there was a gentleman spoke to him immediately after he quitted the crowd, not in Hardie's hearing." He says, "if he had not been forced off, unquestionably he would have taken that paper down from the watch-box. The paper was pasted against the watch-box, which was a place for sticking bills, to give information to the people, and appeared to have been so employed before. About two minutes after he left the crowd, he saw another paper pasted on a wall, which he took down, and afterwards read; it contained the same paragraph as the former did, and was dated 1st April." Here, Gentlemen, is positive testimony, by this magistrate, that the paper he found pasted upon the wall, in a few minutes after he left

the watch-box, contained the same paragraph which he had heard read, and followed the man in reading with his own eye, upon that box; and, therefore, I apprehend, you can have no doubt of the justice and propriety of the observation, which was with so much eloquence and so clearly stated to you by my learned brother on my right hand, that you have the most conclusive evidence, that, as far as this paragraph is concerned, the paper is proved, satisfactorily proved, to be an identical copy of the other. Then he goes on and says, "He observed the head of the address, but he cannot at this moment state what it was, though it was a paper of the same kind. A party was reading this document, and was interrupted by him."

Now, Gentlemen, this witness is afterwards, upon the cross-examination, asked some questions, and he states, "That he heard part of the hand-bill or placard read, and that he observed the same passage in the other paper, though he cannot repeat from memory what he heard read." But, Gentlemen, it is for you to say, whether this cross-examination in any degree affects the fair import of his evidence. He never had said he could repeat verbatim this long hand-bill, which I shall not fatigue you by reading again; all Mr Hardie said was, that when he looked at the paper on the well, he saw the identical paragraph which he heard read, and he is still positive the words in that paragraph are those he heard read; and, therefore, there is nothing in this cross-examination which affects his evidence, that this paper on the well was a copy of that which he saw on the watch-box, and part of which he had read.

But, Gentlemen, this witness has been also examined to points which the Court decided were fit for your consideration, in reference to that question which you are now trying, whether or not there was an actual levying of war; I mean, the actual state of the city of Glasgow, where this paper made its appearance on the Sunday morning. Mr Hardie states, "that he was in Glasgow on the Monday after; there were great crowds of idle people in the streets; they appeared to be working people of all classes. It was worse on the Wednesday. On that day it was just a mob from one end

of the town to the other, and people shutting their shops between three and four in the afternoon; that was generally the case with the shopkeepers, both in the public and private streets, which is not usual except on Sundays. He ascribes this to a feeling from the crowd. Several parties were marching in military array, as if drilled. They seemed to be going towards Bridgetown, which is one of the suburbs to the eastward of Glasgow. That suburb is populous, and of the same description of persons as those he has described as being in the streets. The current of the marching men set one way; but there was a current going in every direction. On Sunday afternoon he went through Bridgetown, and saw a great number of the Addresses, not less than a hundred, pasted against the walls. There were not many people there at that time; it was not crowded like the streets of Glasgow. In consequence of this address, and this state of the streets, a meeting of the town and county magistrates was called immediately; the general police of the town was reinforced, and also the county patrole; fresh bodies of the military were drawn into the town; and a proclamation was ordered to be printed, and posted up through the whole streets of the city of Glasgow. That these steps were taken in consequence of the appearance of the town on the Monday, and the following days."—Now, Gentlemen, it is for you to consider, whether or not, when you have the evidence of the existence of such an Address as this being posted up all over the city of Glasgow and suburbs,—when you recollect the nature of that Address,—that it contains a declaration of the purposes of rebellion—that it calls upon all persons to join in that great undertaking in which the parties were engaged—that it addresses the soldiers, and calls on them in that language—that it inculcates, as a measure towards the accomplishment of their views, the ceasing from all work—which was followed by the persons in Glasgow assembling, to the terror of the magistracy; that is not Treason in reference to this question. I shall not detain you much longer with the rest of the evidence.

Buchanan merely swears to the fact, of the armed party, in its way to Bonnymuir, coming to his house, armed with pikes, guns, and other weapons: That they had some refreshment, bread and porter; and that Baird paid for what refreshment they got; and that he granted that document of which you have heard so much. He was asked to give a receipt, and proposed to write it in the usual way, "Received from," wishing to get the name of the person. This was objected to by the prisoner, who stated that would not do; and that he then dictated to him a receipt in these words, which was signed by this man, and delivered by him to the prisoner; and you will recollect, that, in his declaration, the prisoner states the fact, that he is in possession of the receipt, and produces it; and it is marked in reference to his declaration, and is verified by the persons present, that the receipt bore these words,—"The party called, and paid for porter and bread 7s. 6d." You will recollect the conversation as to the note or obligation that was to be given in the first instance; they supposed that he would not be very fond of it, as it was payable at six months, they said. It is for you to consider, whether the extraordinary language which is here used, and the document taken by this person, which he was afterwards to avail himself of, is not an ingredient of the general purpose in which he was engaged; and that this document was to be a voucher for the 7s. 6d. he had advanced for the behoof of these persons. It is not an ordinary receipt, or one that would be granted by an ordinary person; and it is for you to draw the conclusion, whether it is referable to that general purpose in which they were then engaged.

James Russel establishes a fact which is also important in the nature of this case, because, amongst the overt acts charged, that of obtaining arms by force and violence, is one; and this man states, "That he, on the morning of the 5th of April, lived in Long Croft, in the parish of Denny, about a gun-shot from the road to Glasgow: That some armed men came to his house between seven and nine. That he suspected their object; he had two guns, he removed one, and hid it behind his house, and on coming

in he heard a person observe that he had got one. When he came back he had the gun in his hand. The witness said it was his property, and that he should not take it; the other replied, "Sir, I will give you a receipt for it." Now, Gentlemen, you will consider whether this is not a circumstance that tallies with the receipt for the money for the refreshment. Here are persons going about the country in this manner armed; some taking arms by force; others taking refreshment, and requiring an acknowledgment for the money in this extraordinary manner. This man next saw arms in the Castle of Stirling, and he fixed upon his own musket as the one that was taken from him on that occasion; and you will recollect, that when the prisoners were collected, all the arms were collected, and they were carried with the prisoners to Stirling, and delivered to the storekeeper, who swears, he received those arms in Stirling, and kept them in his custody, and identifies those old boxes containing muskets and pikes; in one of which boxes is found this musket, of which Russell was the proprietor. This musket had been used upon the field of Bonnymuir, and was collected with the other things, and is now lying on that table; and, therefore, you will consider, whether this is not proved to have been a weapon taken by one of those with whom the prisoner was active in the field, and it is for you to say, whether he is or is not connected with that matter.

But, Gentlemen, there is another branch of the evidence to which it is my duty to call your attention: though it has come last in order, it might have been, more properly, the first branch of the evidence. I mean, that which goes to the overt act in the fourth charge of the indictment,—the preparing arms for the purpose of levying war, as appearing in the conduct of the prisoner at the village of Camelon upon the Monday preceding the skirmish at Bonnymuir.

Thomas Wright says, "He knows the house of Robert Leishman, change-keeper in Camelon. He was there on the 2d of April last in the evening, about ten o'clock. When he went in, he found Peter M'Callum, James Dunbar, and William Wright, junior. He sat down, and stopped a while.

Wright and Dunbar went away after some time; and, after that, John M'Millan and Andrew Burt, junior, came in, and John Baird, and some others with him; the prisoner is that man. Andrew Burt, junior, brought in some of those weapons they call pike-heads; he had them under his apron; he gave them to John Baird, and those men that were with him. The witness saw two, but Burt said there were thirteen. Burt put those two with the rest in a bag, and Baird and the rest of the men carried them off. They paid for them, and Burt received the money, but he did not know the sum; he did not know the price of a pike-head. Heard some one say, and it was agreed among them, that Baird and his men were to meet Burt and his men on the canal bank next night between their place, which he understood was Condorrat, and Camelon. Baird and his people had come from Condorrat. They were to meet the next night, but they did not mention the time, and who it was that said it he cannot tell; this was said, he believes, after the pikes were delivered to Baird. A man that was with Baird carried out the bag, but he does not know his name." Now, Gentlemen, I do think that this is most material evidence; material, not only as a preparation in the acquisition and purchasing of arms of this description, pike-heads,—but important also, as indicative of a general purpose, when you take the latter part of the deposition of this witness into view,—that he heard, though he cannot tell by whom, but it was in the presence of the prisoner, who had got this bag of pike-heads, that they were to meet Burt and his friends upon the canal bank the next night. You have it sworn, that it was after this acquisition of pike heads that this agreement was made in the presence of the prisoner. Recollect this is only on the Monday evening before the Wednesday, and that the meeting on the canal bank next night tallies within a few hours of their appearing at the Castlecary bridge, where they breakfasted, and afterwards proceeded alongst the canal. They fulfil their part of the engagement; they come along the canal the next night or the following morning, and we know what took place afterwards; and, therefore, I do apprehend, that

it is important, not only as to the acquisition of the arms, of which those now on the table are similar in the description,—but it is for you to judge, whether it does not afford a strong indication of a deliberate purpose to rise with arms on that night, and do that which you find is afterwards done.

William Wright, jun. "lives in Camelon, and was there in the beginning of April last. Leishman lives there, and keeps a public-house. He recollects hearing of the battle at Bonnymuir. About that time he heard that it happened on a Wednesday. That he was in Camelon on the Monday before, and was in Leishman's between seven and ten o'clock." Now, I request you to look to the hour, because the other man says he was there about ten in the evening; and he speaks to the fact of Andrew Burt bringing in pike-heads; but this man says he was in that house between seven and ten o'clock. "He saw his cousin and his brother Thomas there. He went into the kitchen, and he was going through to a Nailors' Friendly Society, and he was ordered to go into the back-room; and when he went there, he found Baird and Rogers, and two others whom he did not know. By Baird, he means the prisoner at the bar. He was in there before him. Several came into the room after this. He saw James Burt, and Andrew Burt, as the other said; James Burt came in with some pike-heads. Andrew Dawson also came in. Andrew Burt was there before he went in, but James Burt was not there at that time." Now, Gentlemen, you might be led to suppose there was here a difference in the evidence of these two witnesses; but, if they are correct in their statement, the one speaks to a parcel of pikes brought in by Andrew Burt, whereas the other man speaks of James Burt having brought in a parcel, and put them under the cover of the bed, and he did not see them delivered to Baird; therefore, it is for you to consider whether they are not speaking to two parcels of pikes, brought in by the two Burts, or whether there is any material difference between their testimonies, so as to shake their credit. One of these persons was brought here in custody, but he is not stated to be an accomplice; he was

brought here under care, and went back in custody. I apprehend you will find that, though one speaks of James Burt, and the other of Andrew, it may be true that they are giving an account of two sets of pikes, and that the testimony of the first witness is not weakened by, or inconsistent with, the testimony of the other;—but upon that it is for you, Gentlemen, to judge.

I shall not trouble you by going back to Alexander Robertson's evidence, who is a clear witness to the origin of this business, seeing them march along the canal, about four-and-thirty, armed with pikes and muskets,—of that we have enough in the evidence which has been already sufficiently detailed.

And now, Gentlemen, having brought this evidence fully before you, which has been met by no contradictory testimony upon the part of the prisoner, it is (with the exception of another part of the evidence, to which I will for a moment advert) for you to draw the conclusion it warrants. That other branch is, the declarations of the prisoner—declarations which were proved to you to have been taken by two respectable magistrates—one the Sheriff-Substitute of this county, the other the Sheriff-Depute of the county of Edinburgh,—both of whom have, on their oaths, and they are confirmed by the witnesses, sworn to you that the two declarations of the prisoner, of the 7th and 11th of April, were freely and voluntarily emitted by the prisoner, when he was of sound mind, and in his sober senses,—certainly emitted by him in a way which must satisfy you he was under no constraint whatever—that he was under no intimidation—no undue influence, inasmuch as they have sworn that they were freely and voluntarily emitted, and the declarations are themselves formal and complete in every sense.

Now, Gentlemen, it has been stated to you upon the part of the prisoner, not that these are not fit matters for your consideration as part of the evidence, but that they in fact are to be considered as coming under your consideration in circumstances extremely unfavourable. That

is the import only of what was stated on the part of the prisoner; and that this is a part of the evidence to which you ought to look with great jealousy; because it is said that these declarations are founded upon in this case, not in support of facts in the case, but as sources and means from which motives, views, and purposes are to be extracted. Now, Gentlemen, upon this part of the case, as to the competency and admissibility of declarations, I certainly shall say nothing to you whatever as to the rule of the law of Scotland, with regard to which you are familiar, and which all of you know every day permits the declarations of parties accused to be used as circumstances and ingredients in almost every criminal trial that takes place in this country, but I think it much better to follow the example of the Lord Advocate, and to call your attention to what is the rule of the law of England, with regard to what may be considered as a parallel species of evidence to that which you now are taking into your consideration. That this evidence, such as it is, was taken in a regular and a legitimate manner, according to the rule of the law of Scotland, no doubt can be entertained for a moment.

Now, Gentlemen, the general result of the law of England I beg leave to read to you, from the authority of Phillips, in his last edition, where he refers to a material case, which had raised the question, and which case had brought it to a full decision. He states, that "the general rule on this subject was very fully considered, in a judgment, delivered by Mr Justice Grose, on a case reserved for the opinion of the twelve Judges,"—one of the most solemn adjudications a point of law can receive in England; "and it seems to be now clearly established, that a free and voluntary confession by a person accused of an offence, whether made before his apprehension or after—whether on a judicial examination, or after commitment—whether reduced into writing or not,—in short, that any voluntary confession made by a prisoner to any person, at any time or place, is strong evidence against him, and, if

satisfactorily proved," he goes on to state, "sufficient to convict, without any corroborating circumstances." This, Gentlemen, is the rule of the law of England, given by this author as the result of that deliberate opinion of the twelve Judges; but, as has been correctly observed to you, it is by no means necessary that it should be pushed to the length which you hear the law of England would allow it to be pushed; for all that has been stated on behalf of the Public Prosecutor, and all that it appears proper to state here, is, that these declarations are ingredients and circumstances of evidence adduced in this case, deserving of your most deliberate attention, and that, with regard to certain parts of the case, they do afford evidence of a most important kind.—I here allude to that general proposition which has been so much relied on on the part of the prisoner, on which he rests his defence, and on which he states he is entitled to a verdict of acquittal—that there is no proof whatever, notwithstanding the evidence I have gone through, (and, Gentlemen, I own I fear at too great length,) that he had the purpose it is necessary to prove he had in the transactions in which he admits himself to be engaged;—that is to say, that he was not so concerned in these proceedings, and that the proceedings themselves were not of such a nature as amount to an actual levying of war against the King, according to the construction of the law—that he did not conspire, intend, invent, and devise the levying of war against the King, for the purpose of compelling him to change his measures or counsels, or for the purpose of overawing both, or either House of Parliament.—That is the position on which he rests his hopes of influencing your opinion, and it is for you, independently of what I am now to call your attention to, to say whether you think there is any reasonable ground for that conclusion to which he wishes you to come—whether, in connexion with the Address, which is admitted to have been a publication of a treasonable nature, with regard to which it is for you to judge, whether the prisoner has not been brought in contact, by the delivery of the copy to Cooke—by the interference which

Hardie had, with reference to that publication, to resist the magistrate taking it down, and the attempt to distribute it amongst the troops, by the copy delivered to Cooke, connected with the way and manner in which the arms were procured, the way in which they marched in military array —in which they took that position, and afterwards gave battle to the cavalry, in the full knowledge that they were the King's troops, you think there is the slightest foundation for the position that has been taken upon the part of the prisoner; for I have no difficulty, Gentlemen, in stating to you my opinion, that if y u believe the evidence which has been adduced in this case—if you think the facts which have been disclosed in the evidence are sufficiently proved, it must be held that there was an actual levying of war, and that there was, in construction of law, a conspiracy, and an intention—an attempt and intent to levy a war against the King. That is my opinion upon the law of the case, if you believe the facts;—the facts are for your consideration, and the result of them it is for you to draw.

But, Gentlemen, I apprehend that, when you come to consider the passages in the document to which I am now to allude, if there could have existed on the rest of the evidence any reasonable ground to doubt that it was not a private, but a public purpose, that was here in view, that doubt must vanish when you look upon the deliberate statement which this prisoner at the bar has himself given. In the first place, Gentlemen, in the declaration emitted at Edinburgh, this prisoner states, that he "being shewn a printed paper, entitled, 'Address to the Inhabitants of Great Britain and Ireland,' dated Glasgow, 1st April, 1820, declares, that he saw a similar Address posted on the toll-bar at Condorrat, at eleven o'clock on the forenoon of Sunday, the 2d curt. but he does not know by whom the Address was printed, or posted upon the toll-bar." Here, therefore, is a distinct admission that the prisoner at the bar did see posted upon the toll-bar of Condorrat that treasonable paper, exciting to a general rising in arms—a paper, calling upon the soldiers to desert their allegiance and duty,

and to join those who were about to rise in arms, and who there pledged themselves to return home no more, unless crowned with victory. This is the paper which he sees upon the morning of the Sunday, by his own admission, to carry it no further. You see him at Camelon on Monday evening, preparing and acquiring arms by the purchase from the Burts. You see him upon the Tuesday, and early on the Wednesday, arrayed in military order, as the commander of a party against the King's troops.

But the other declaration does not leave the matter here; for, being interrogated, "what purpose the declarant and his party had in view? declares, that, according to the mode in which reformers proceed, no purpose was mentioned;" declares, "that he was to obey the orders he received;" and in a former part of the declaration he states, that he received orders to resist the military, if attacked. He declares, that the purpose was connected with reform—"that it was a radical reform in the Commons House of Parliament; and the declarant believes this to have been the understanding of the party: That he believes there was something of annual parliaments in it."

Now, Gentlemen, it is for you to consider, whether, if a person was deliberately to contrive a declaration of a purpose which was to bring a rising in arms, or a preparation for a rising in arms, within the terms of that statute to which I have before referred, the 36th of the late King, and made perpetual by the 57th of the late King, a rising and levying of war, for the purpose of compelling the King to change his measures and counsels, it would have been possible in language to have made a more explicit declaration than that which is clearly given by the prisoner of the purpose which he and that party had in view. Gentlemen, this is his own statement of the matter. If you think there is any doubt of what the purpose was on the face of the evidence, you will consider whether it is not most completely removed by this explicit statement of the prisoner,—he was to obey any command he might receive; and he makes a declaration, that what he was doing was in furtherance of this object of reform—in the language which he used, a radical reform in

the Commons House of Parliament. It is for you, Gentlemen, to consider, whether you can entertain any doubt. I state, there is none existing; that the assembling with force and arms of persons, whether in a greater or less number, with that object in view—the bringing about a radical reform in the Commons House of Parliament—is a direct levying of war against the King. If you believe the facts, it is a levying of war against the King; but it is for you, in the exercise of the prerogative that belongs to you, to consider, whether you think the evidence entitles you to draw a different conclusion. If you do, in the rightful discharge of your duty, think, that the evidence has been defective—that it has not brought home the fact, that a war was levied, or that a conspiracy was set on foot to levy war—that that overt act did not take place, and that it has not been proved—that that war was not intended for a public but a private purpose—in God's name, if you feel that that is the result of the evidence, act upon it; but if, on a careful, and an attentive and dispassionate view of the evidence, looking to the evidence alone as your guide, you entertain no doubt that there has here been an actual levying of war, and a conspiracy to levy war, you will not hesitate to perform the duty you owe to God, to yourselves, and your country. Whatever verdict you return, while it will be satisfactory to your consciences, I trust will be so to the country at large.

The evidence is now before you, and you will retire and consider of your verdict; and I pray to God to assist you in arriving at the true and legitimate result of the evidence. You must be unanimous in this case; you are a Jury of twelve, as in a civil case.

[*The Jury withdrew at twenty minutes past twelve o'clock, and returned in an hour and three quarters. One of the Jury presented a paper to Mr Knapp.*]

Mr Drummond.—This gentleman is not the foreman—Mr Mitchell is the forem an.

Lord Justice Clerk.—Gentlemen, this is a proceeding according to the law of England, in which the Jury are not empowered to choose a foreman. The person first named is the foreman; and it is his duty to announce the verdict to the Court *viva voce*, not in writing.

One of the Jury. (Mr Munroe.)—I understood that; but a number of the Jury were anxious to have it in writing, and one of the macers, whom we sent to your Lordships, came back and told us to make it out as we thought right.

Lord Justice Clerk.—The message to us was, that you had a difficulty. If you had come into Court we should have given you any assistance. Written verdicts are entirely out of the question. It is a verdict upon which you must make up your minds, and return *viva voce.*

Mr Knapp.—Mr Mitchell is the foreman.

Mr Jeffrey.—His Lordship will instruct them that they must be unanimous.

Lord Chief Commissioner Adam.—You must have no difference of opinion, Gentlemen.

Lord Justice Clerk.—If you are agreed, why cannot you give the verdict?

Mr Knapp.—Are you agreed in your verdict?

Mr Mitchell.—Yes.

Mr Knapp.—Is the defendant guilty or not guilty?

Mr Mitchell.—Guilty, on the second count.

Lord Justice Clerk.—It was a natural mistake. I am sorry you should have had such a misunderstanding as to your verdict being in writing.

One of the Jury.—My impression was that it should be *viva voce*, and the messenger told us we might give it in writing.

Lord Justice Clerk.—Even in the Justiciary, we have an act now authorising *viva voce* verdicts.

Stirling, Saturday 15*th July*, 1820.

PRESENT,

The Right Hon. Lord President HOPE,
The Right Hon. Lord Justice Clerk,
The Right Hon. the Lord Chief Baron SHEPHERD,
The Right Hon. Lord Chief Commissioner ADAM,
The Right Hon. Lord GILLIES.

James Clelland,
Thomas M'Culloch,
Benjamin Moir,
Allan Murchie,
Alexander Latimer,
Alexander Johnston,
Andrew White,
David Thomson,
James Wright,
William Clarkson,
Thomas Pike,
Robert Gray,
Alexander Hart,
John Barr,
William Smith, and
Thomas M'Farlane,
were set to the bar.

Mr Jeffrey.—My Lords, as counsel for the unfortunate prisoners,—the name of one of whom has now been called as next in order to take his trial upon this serious charge,—I trust I shall relieve the Court and the country at large from some protracted anxiety, and at the same time not neglect my duty to my clients, which I have endeavoured to discharge, without considering my own insufficiency for the task which was imposed on me, and, I think, without

having deserved the imputation of having been sparing of my own toil or labour. My Lords, I hope, without departure from that, I may now venture to state to the Court, that after the event of the trials of the two last days, that have been gone through with so much deliberation, and so great a struggle on both sides, I have advised the unhappy persons at the bar, that, if they are conscious of the guilt charged against them, their wisest course would be, to retract their plea of Not Guilty, and acknowledge their guilt openly in Court; and, I believe, I am now authorised to state, that they are ready to withdraw that plea. Your Lordships, of course, will now give them an opportunity of correcting any misapprehension on my part, and allow them to speak for themselves in a matter which they only can ultimately determine, and where their own consciences must be the guide of their conduct.

Lord Advocate.—My Lords, the prisoners at the bar have the assistance of able counsellors, and must, with such advice, judge for themselves, what is the most wise line of conduct for them to pursue. I wish it, however, to be known to the Court and to the country, that this proceeding on their part does not take place in consequence of any arrangement betwixt the prosecutor and those acting on the part of the prisoners. I earnestly hope that the mercy of the Crown may be extended towards a part of these unfortunate men, in such a manner as may seem most fitting to his Majesty; but these prisoners are not to suppose, that, by any confession they may now make, they are to escape a punishment of a capital nature. It is right that they should be fully aware of this; and that, before they plead guilty to this indictment, they should well weigh the consequences of the step, and feel that nothing has or can now pass between us which may exclude the possibility, or even the probability, of a considerable portion of these individuals suffering the highest punishment of the law.

Mr Jeffrey.—My Lords, I certainly must confirm the statement so correctly made by his Majesty's Advocate. My Lords, the plea of Guilty is proposed to be entered by these prisoners with a full consciousness that there is no stipula-

tion or compromise; and their whole hope and trust is in that clemency, to which, it is probable, their claim may be increased by this mark of their contrition.

Lord President Hope.—James Clelland, you have heard what has been stated on your part by your own counsel; and you have heard also what has been stated on the part of his Majesty's Advocate, that while, upon the one hand, your own counsel has advised you, and thought it most for your interest, that you should withdraw your plea of Not Guilty, and now plead that you are Guilty of the offence charged in this indictment, and throw yourself upon the clemency and mercy of the Crown,—on the other hand, his Majesty's advocate has told you, that this is your only hope of mercy, but that there is no stipulation made on that ground. I have also to inform you, that there is no discretion upon the part of the Court. The punishment is a statutory punishment, and we can do nothing, upon the plea of Guilty, but pronounce upon you the same judgment that we pronounce upon those prisoners who have been tried and regularly convicted. You will therefore consider all these things in your own breast. Certainly and unquestionably I may add this to you, that, according to my apprehension of the matter, it is your wisest course to plead Guilty. It implies not merely an acknowledgment of the offence, but it shews contrition for it. At the same time you must judge for yourself.

James Clelland then withdrew his plea of Not Guilty, and pleaded Guilty.

Thomas M'Culloch,
Benjamin Moir,
Allan Murchie,
Alexander Latimer,
Alexander Johnston,
Andrew White,
David Thomson,
James Wright,
William Clarkson,
Thomas Pike,
Robert Gray,
Alexander Hart,
John Barr,
William Smith, and
Thomas M'Farlane,

included in the same indictment, were then severally asked

if they understood what had been stated by the learned counsel on each side; and, answering in the affirmative, were allowed to withdraw their plea of Not Guilty, and plead Guilty, which they accordingly did.

Lord President Hope.—My Lords, before any further procedure is held in this matter, I am sure your Lordships will all agree with me in saying, that although Mr Jeffrey thought himself entitled in point of law to object to the appearance of Mr Serjeant Hullock, or any English counsel, in this cause against him, yet, in point of fact, there never did exist, or could exist, less necessity for any counsel fearing to meet another counsel of any bar whatever; and I am sure, if all the bar of England had attended here on behalf of the unhappy men now convicted, it is impossible they could have been better or more ably defended. Every point was hit that it was possible to hit for them, and pleaded in the ablest manner; and it must be satisfactory to the country, that the result of these trials has been to raise the character of the Scotch bar, and to shew they are fully competent to the conduct of any case whatever. With regard to the last proceeding, he has acted with as much judgment as he did with ability in the defence of his other clients.

John Anderson, from St Ninians, charged in a separate indictment, (for whom Mr Jeffrey and Mr Hope Cullen appeared as counsel,) was put to the bar.

Mr Jeffrey.—My Lords, as counsel for the unfortunate person at the bar, I believe I shall not be thought irregular in interposing thus early with a statement, which I trust will be satisfactory to the Court, and all persons concerned in this trial. This unfortunate person, since his arraignment, has had time to reflect both upon the acts in which he has been engaged, and upon the evidence which, I believe, he has already furnished of his concern in them. He has also re-

ceived the admonition,—which, I trust, will be more extensively operative,—that all persons, concerned in any measure with the transactions, must have received from the result of the two trials which took place yesterday and the day before; and, under the influence of these considerations, and, I trust and believe, of a wholesome contrition for the part he has been led to act in very improper proceedings, I am authorised to ask leave, on his behalf, to withdraw the plea of Not Guilty which he has entered, and to plead anew to this indictment in other terms.

Lord Advocate.—My Lords, on the part of the Crown I must repeat what I stated before, that this proceeding takes place, not in consequence of any understanding betwixt the prosecutor and the prisoner relative to any mitigation of punishment; and I now tell him before he pleads, that I can hold out no assurance or expectation that the capital part of the sentence of the law will not be inflicted upon him.

Lord President Hope.—John Anderson, you have heard what has been stated for you on the part of your Counsel, and on the part of the King's Advocate, that if you do withdraw your plea of Not Guilty, and plead Guilty, you throw yourself entirely and solely upon the mercy of the Crown; that there is no bargain or stipulation made, or can be made, of a pardon, or mitigation of the punishment, and that you must take your chance; and with regard to the Court, we have no discretion. This is not one of the crimes, nor is this such a Court as the Court of Justiciary, which has the power of mitigating punishment according to the degree of guilt. The punishment is inflicted by law, and it is the punishment of death, and we can pronounce no other against you; and, therefore, by your plea of Guilty, whatever expectation you may have in making that confession, which implies an acknowledgment of the fact, as well as contrition in some degree, it must depend upon the Crown alone. Therefore, under these circumstances, if you wish to withdraw your plea of Not Guilty, and plead Guilty, the Court will receive it; but remember

it is your own act alone, and you must consider the consequences.

The prisoner then withdrew his plea of Not Guilty, and pleaded Guilty.

WILLIAM CRAWFORD, from Balfron, also charged in a separate indictment, (for whom Mr JEFFREY and Mr MUNGO BROWN appeared as counsel,) was put to the bar.

Mr Jeffrey.—My Lords, I believe I may cut short this part of the procedure. For, on behalf of this man,—the last, I believe, in the fatal calendar for this place,—I think I am authorised to make the same statement I have already made with regard to so many others, although there are circumstances in this case which render the recommendation which I have thought it prudent to give more questionable than in most of the other instances; and I believe it is known to the prosecutor, that this is not one of those aggravated cases, which unfortunately cannot be said of all the others. He was connected with and misled by persons, who have involved him in the guilt with which he stands charged; but, in full reliance on mercy from that quarter, on which he is aware his only legitimate reliance for indulgence can be placed, he is advised, with all humility and penitence, to ask leave to withdraw his plea of Not Guilty, and to plead again in different terms to the Court.

Lord Advocate.—I have only to repeat again, that he must plead without any assurance being held out to him of mercy.

Lord President Hope.—You have heard what has been now stated; of course, you say, your only reliance is on the mercy and clemency of the Crown. You will judge for yourself. At the same time, I have no hesitation in saying, I think it is your wisest course. By this you avoid a full disclosure of your guilt, and you have all along appeared to

shew marks of contrition; but, at the same time, no assurance is or can be held out of mercy. It must be your own spontaneous act and deed, trusting and relying that a faithful report will be made of your case.

The prisoner then withdrew his plea of Not Guilty, and pleaded Guilty.

Lord Advocate.—My Lords, now that the prisoner Crawford has pleaded Guilty, I trust I am not going beyond the proper line of my duty, when I state, that as there necessarily must be different shades of criminality attached to the individuals who have this day respectively pleaded guilty to the high charge exhibited against them, so it is satisfactory to me to have it in my power to say, that the case of this prisoner is not one of the most aggravated description; and that I shall feel satisfaction, if, on a representation of the circumstances of his case to the proper quarter, a mitigation of his sentence shall be deemed admissible.

In closing our sittings in this county at the present time, I trust I may be forgiven for expressing a humble hope, that the result of the proceedings of this and the two preceding days will satisfy this Court and the country, that a due attention has been here paid, on the part of the public prosecutor, to the selection of the individuals fitted to be put upon their trial before this high tribunal.

Lord President Hope.—Your Lordships must be all satisfied, that the conduct of the Lord Advocate has been, in all respects, most proper upon the present occasion.

Stirling, Monday, 31st July, 1820.

For Arraignment of the Defendants in the Camelon Case.

PRESENT,

LORD PRESIDENT,
LORD PITMILLY.

The Grand Jury were called over—All present.

Foreman of the Grand Jury.—My Lord, I am requested by the Grand Jury to express to your Lordships their best thanks for your Lordship's kind and condescending attention to their request, in permitting your Lordship's Address to them to be printed.

Lord President Hope.—Gentlemen, it was my duty to comply with the request of so respectable a Grand Jury as this is. I am sorry you have had the trouble of attending so often, but I hope this is the last time.

John M'Millan,
James Burt,
Andrew Burt the younger,
Daniel Turner,
James Aitkin, grocer,
James Aitkin, wright,
Andrew Dawson, and
John Johnstone,

were then put to the bar, and severally pleaded Not Guilty.

Lord President Hope.—Prisoners at the bar, I have to inform you that your trials will commence on Friday next,

the 4th of August; you will be prepared accordingly. Which of you will be tried first I cannot tell—that depends upon the Crown.—Gentlemen of the Grand Jury, I understand it is not necessary for you to attend the trials, or again, unless you are summoned. I hope this will be the last time.

Adjourned to Friday next, the 4th August, 9 o'clock.

Tolbooth, Stirling, Friday 4th August, 1820.

PRESENT,

LORD PRESIDENT,
LORD CHIEF BARON,
LORD PITMILLY.

Counsel for the Crown,	*For the Prisoners,*
LORD ADVOCATE,	MR GRANT,
MR SOLICITOR-GENERAL,	MR CULLEN.
MR DRUMMOND,	
MR HOPE.	

Trial of the Defendants in the Camelon Case.

The Court had, on a former occasion, been adjourned to nine o'clock this morning, but the Judges did not take their seats till a quarter before twelve o'clock.

Lord President Hope.—Gentlemen, I ought to apologise to you for this delay, but it was not the fault of the Court: the fact is, that the trials at Paisley occupied so much of the time of the Judges, and all persons concerned in them, and caused them so much fatigue, that they had not time to prepare themselves till now.

John M'Millan and Andrew Dawson were put to the bar

Mr John Peter Grant.—My Lord, I have an humble motion to submit to the Court, on the part of the two prisoners who are now at the bar, and I ought to apologize to the Court for not being perfectly aware whether this is the time to submit that motion: it is for leave of the Court that they may withdraw the plea they have already put in at the arraignment, and plead differently.

Lord President Hope.—This is the only time, I presume.

Mr Grant.—My Lords, at the request, and by the desire of the unfortunate men at your Lordships' bar, acting, as they do, under the advice of my learned friend Mr Cullen, who deserves so much credit for the great and unremitting pains and attention he has bestowed upon their case, and acting under my advice, proceeding upon the very copious and accurate information which I have derived from him, with regard to the nature of the case of these prisoners, assisted as we have been by the Agents whom your Lordships appointed, to whose conduct throughout, and I may take this opportunity of saying, to the conduct of all the Agents the Court has appointed for the unfortunate persons the Court has had to try, great praise is due; (and I may add, I can bear testimony that no person in this country, whatever his situation, could have received more faithful or better attention, under any advice, than has been given to these prisoners.) I have to state, that these unfortunate persons now humbly crave leave to withdraw their plea of Not Guilty, and to plead Guilty to this indictment. My Lords, perhaps the Court will forgive me if, in a case of this nature, so interesting, not only to us as counsel for these individuals, but so interesting to us as members of this community, I should presume so far upon the time and patience of the Court as to address a very few words to them.

Lord President.—The Court are perfectly persuaded that you would never address to them any thing but what was proper, and will hear you with great pleasure.

Mr Grant.—Your Lordships do me justice,—at least your Lordships do justice to my intentions. We have thought it better, knowing what has passed before, that

these prisoners should throw themselves at once upon the mercy of the Crown. I may take this opportunity of saying, as in another place, in the warmth of argument, I said, and as I now say, upon cool reflection, and much observation of what has taken place on these occasions, that nothing, I am sure, can be more satisfactory to every person who has witnessed it than the conduct of my Right Honourable and Learned Friend who has had the charge of these prosecutions. My Right Honourable and Learned Friend has conducted himself as his duty to his King and to his country required, and there is nothing, in point of candour towards the unfortunate prisoners, that has been wanting on the part of my Right Honourable and Learned Friend, who has united every consideration that has reference to the due administration of public justice. Upon our parts, my Lords, and upon the part of the very humble individual who presumes to address you, we have endeavoured to discharge the painful duties committed to us—duties, your Lordships know, of a very different nature from those of my learned friend. We have endeavoured to defend the cases entrusted to us, in the manner that we thought most conducive to the interests of these unhappy persons; but, as a member of the community, it is impossible that I can, or that my Learned Friend, or that any man can hesitate, in extremely lamenting those transactions, to which it would not become me to give any particular character—those transactions which have caused the institution of this Commission. I am sure that every man, whether his situation be high or low, must be aware that the proceedings that have been had recourse to tended to any other ends upon earth than those ends which the true friends of liberty could lend themselves to. If a conspiracy had been formed for the direct purpose of overturning and shaking every thing that connects us with freedom in this country—if a conspiracy had been formed to place in the hands of the ministers of the Crown dangerous and unusual powers—if a conspiracy had been formed to separate the lower orders of the people from those other classes of society, who, by the constitution of all societies, must contribute to defend

that class from oppression—if a conspiracy for these objects had been formed by the greatest skill, and the exertions of the greatest talents of the human mind, combined with the most nefarious and wicked dispositions, it could not have promised to itself success by any means so likely to effect its purpose as these proceedings to which I have alluded. In proportion as a man is a friend of liberty, (and I take it as no merit to myself to say I am so,) he must feel that every thing depends on the freedom of our constitution. I may say, and I wish I could say it in the hearing—not of those persons who were at the bottom of these transactions, for to these it would be useless to say any thing,—but to those men who have been betrayed by such persons,—that, if they really wish to perpetuate every thing wrong, and much is wrong, in the situation of this country; as, in the situation of every society that exists,—much that may be remedied—much that requires to be remedied;—but if they wish to perpetuate every thing that is wrong—if they wish to prevent those who are desirous to rectify what is wrong, from accomplishing their purpose, they will give ear to such persons as those who have misled them; and they will frustrate all the exertions of the powerful minds which are united in this country,—and, though they have not a majority in Parliament, great, and powerful, and excellent men, are united—in defence of the liberties of the country, and of the lower ranks of society—men who would put in hazard the honours they derive from a long line of illustrious ancestors, and the immense fortunes they possess—who would risk every thing—in defence of the liberties of the great body of the people; and, if it is intended to render their exertions useless, and annihilate or palsy them, let the people go on and listen, like those who have been deluded in particular parts of the country, to the suggestions of such wretches as have misled them on this occasion, and they will accomplish that object. In every country under heaven, similar proceedings have ended in the establishment of a military despotism. It never has been seen on earth that the result has been otherwise; because persons, be they how virtuous soever—persons of

education and property, are subject to fear when they see that their property is put in danger. They may shut their eyes to what may be, after all, the real danger—they may shut their eyes to what may be the case—a tendency to extend the prerogative of the Crown. They *will* shut their eyes to the real danger, and take fright at not so substantial a danger, and abandon their natural post—the protection of liberty, and will throw themselves all at once into the arms of those who would extend the power *they* would otherwise wish to resist. I have to entreat your Lordships' forgiveness for thus expressing myself. I do it from an affection common to me and your Lordships, and every man who hears me, for the persons thus misguided. It is the unfortunate condition of society, that when men are misguided, if their conduct brings them under the law, it is necessary some example should be made of them. In the particular cases where sacrifices are made, we all weep and lament over them. Nothing they can do will change our affection for them, and what we chiefly deplore is, that, by their yielding to the bad advice of others, they place themselves in situations which tend to their own ruin. My Lords, with respect to these unhappy men, I am sure I can take no better course than leaving them to the mercy of the Crown, whose mercy, like its justice, will proceed at the suggestion of those who advise in matters of this kind. It is needless for me to say that I do this, not by way of compromise with my Lord Advocate,—such a compromise would be impossible—it would be impossible for me to propose, or him to hear it; but I do it on the confidence I have, not only in the generosity, but the prudence of his conduct;—because I am satisfied he will think enough has been done for public justice here; and when these men, by their plea, shall confess the guilt of which they are accused, he will take it into his own favourable and candid consideration, he will represent it favourably where mercy will be disposed to prevail, and he will trust to the returning good sense of the people,—he will trust to their attending to the display which has been made of many things which they thought could hardly be brought to light—he will trust to

the accuracy with which the officers of the Crown can trace the most secret conspiracy,—and the effects produced on the minds of the people, by knowing that those who have excited them to these acts have shewn themselves to be cowards—to be despicable and unworthy of trust—have shewn that they can betray others into the most perilous situation, and then desert them—that they can tell them the most absurd stories of assistance here and there, and God knows where—and things and visions in the air which never took place; he will trust to these reflections inducing them to take care how they, or any person over whom they have an influence, yield up themselves and every thing dear to them to the advice and influence of such despicable persons as I have alluded to. I do believe that the people who, on these occasions, have been brought to your Lordships' bar, (those who have been acquitted I am bound to hold not to be guilty of that which has been imputed to them —those convicted I am compelled to hold to be guilty), I am convinced they have been the tools of others, more artful, less brave, and less honest than themselves. I hope and trust that what has passed over all this country will have its due effect, and, if it has, the country will have reason to be satisfied, and the people themselves will have reason to be satisfied. I hope that they will see that the true cause of liberty, even the redress of those grievances which they think ought to be redressed—which they have a fair right to desire should be redressed in a legal way,—that this cause can only be served in a peaceable manner, and that every attempt—every yielding to any thing that may be held out to them to induce them to proceed in a different manner, will involve them in immediate ruin, and, what is of more consequence, put the cause of liberty in the greatest jeopardy. Again entreating of your Lordships to forgive what I have taken the liberty of saying, I shall now conclude, by moving your Lordships to allow these men now at your Lordships' bar to withdraw the plea of Not Guilty which they have put in, and throw themselves entirely on the mercy of the Crown.

The Lord Advocate having assented to this motion, the

prisoners were severally asked whether they wished to withdraw their plea of Not Guilty of their own free will? the prisoners bowed to the Court, and their several pleas of Guilty were then recorded.

Lord Advocate.—My Lord President, my Learned and Honourable Friend, who has just now addressed the Court, has been pleased to express himself in terms of my conduct highly flattering—indeed far beyond any claim to which I can pretend. I have endeavoured to discharge an important and difficult duty to the best of my power, and if the mode of its performance shall in any degree be considered as satisfactory to the country, I shall feel more than rewarded. My Learned Friend does the government but justice in supposing that, in instituting these trials, they are influenced alone by a strong and powerful sense of public duty—that they have not a wish to carry any case even to the utmost length that its circumstances would admit of; and if it be possible to find any thing alleviating in the case of any individual—any thing even connected with the district of the country whence he is brought to trial, that can operate in his favour, cheerfully to allow an unhappy prisoner the full benefit of such consideration. Acting on these principles, I am now to perform a duty of great responsibility, but one which I hope will be felt and considered by this Court, and by the country, as a wise and prudent exercise of those powers with which I am invested.

To show my Honourable and Learned Friend that his expectations on any point are not likely to be disappointed, and seeing he has judiciously recommended to these two men to plead Guilty, whom I consider as the most criminal at your Lordships' bar, so I agree with him in thinking that enough has been done, and that I am now at liberty to arrest the extended hand of justice, and to hold forth that lenity and mercy to the remainder of the unhappy men before the Court. In their favour I therefore consent to a verdict of acquittal.

My Lord, when we recollect the number of persons convicted, and now awaiting their sentence, amounting, in this county alone, to no less than 22, and connected with va-

rious and distinct acts of treason, connected with the affair at Bonnymuir, connected with the insurrection at Balfron, connected with the treasonable proceedings at St Ninians, and now these last individuals, connected with the like proceedings at Camelon. I say, when, in all these cases, convictions have been obtained, I hope it will be generally felt that we have done enough, and that, if I were now to persevere farther, I might be supposed to be influenced by a spirit which I disown on the part of the government, and which I disown on the part of myself. My Lord, I trust that these individuals to whom this leniency is to be extended will feel it as they ought to do. I have had applications in favour of some of them from the masters in whose employment they have been, representing their previous good conduct, and the present lamentable state of their families, and for their almost becoming answerable that the conduct of those men shall in future be different. To these masters I look for the redemption of this pledge. I have a right to expect that they will attend to these individuals, and endeavour to direct them in the right way. And I trust that these persons themselves, when they return to the bosoms of their families, will, instead of being misled by those designing and cowardly miscreants, of whom my Learned Friend has spoken in the terms they deserve, will turn their minds to the real blessings they enjoy, and the justice of the country—will not fail to remember the manner in which it is administered, and with what leniency the government extends the hand of mercy, even in the highest crimes—those against the state. Under this impression I now conclude this duty, by consenting to their acquittal. I cannot, however, sit down without making my acknowledgment of my sense of the manner in which my Learned and Honourable Friend opposite has conducted himself throughout the trials in which he has been engaged,—for, while he stated all that ingenuity or talent could suggest, he has not forgotten for a moment what was due from him as a loyal subject of this country. He has never set forth any principle but such as became a true lover of that country, and has done all that in him lay, consistently with

his duty to his clients, to support the government of these united kingdoms. In so far as he has been pleased to speak of me individually, I now offer him my sincere and grateful acknowledgments.

I should have noticed, as touching the proceedings I have had occasion to institute applicable to this country, that the public in general are particularly indebted to the Magistracy of this county. These gentlemen, acting gratuitously, have, in their respective districts, performed difficult and important duties in a manner most honourable to themselves, and important to their country; and grieved indeed should I be, if the line of conduct I have now taken should not meet with their support and approbation.

A Jury were then sworn, and immediately pronounced James Aitkin, wright, Andrew Burt, junior, James Burt, James Aitkin, grocer, John Johnstone, and Daniel Turner, Not Guilty.

Lord President.—Andrew Burt, junior, and you other men who have been now acquitted, I hope you will consider and lay to heart what you have heard pass now in Court, particularly from your own honourable Counsel. I think, you must be satisfied of the candour and liberality with which you have been treated. You will recollect, and I beg you to recollect, that, notwithstanding what has passed, bills of indictment were found against you by the Grand Jury; and, of course, this must leave an impression upon one's mind, that there was some degree, and perhaps no small degree, of probability of your guilt shewn to that Grand Jury; therefore, it will be peculiarly incumbent upon you to be cautious in your future lives, because that is part of the record which remains, and will not be effaced; and if ever you are accused again of other crimes, it is impossible but that, in the administration of justice, this previous fact must press heavily against you. But I hope and trust better things from you: I hope, that what has taken place will convince you how grievously and dreadfully you were misled; for, admitting the fact to be that you

had grievances to complain of, which you wished to be redressed, I must state to you, and I must do it more fully than your Counsel has, that you took the worst method possible to have them removed. You were risking the salvation and prosperity of the country,—you were risking every thing that was dear or could endear us to our country,—you were risking the reducing this country absolutely to barbarism again,—when the redress of those grievances, alas! would have been impossible, and not worth obtaining. What has now passed must shew you, that in so far as the lives, and liberties, and safety of the meanest people in this country are concerned, this part of our constitution at least requires no reformation; for I am sure, had you been the wealthiest commoner in this country, or the highest peer in it, if he could have been tried in this manner, or before this Court, it is impossible that you, or those tried, could have received more justice or favour. I trust you will return to your own houses, thankful for the proceedings that have taken place; and that you will become, in future, honest men and good subjects.

James Aitkin, Andrew Burt, junior, James Aitkin, John Johnston, and Daniel Turner, then bowed, and left the Court.

James Burt was committed to prison on a new warrant, on account of some offence charged against him in the Sheriff's Court.

Lord Advocate.—My Lord President, I have now to discharge the most painful part of my duty, namely, to move your Lordships for the last sentence of the law.

The twenty-two remaining prisoners were then severally asked, whether they had any thing to say why judgment to die, according to law, should not be pronounced against them?

They made no reply, but bowed to the Court; and the Lord President, in a most impressive manner, pronounced upon them the following sentence:—

Lord President.—Andrew Hardie, John Baird, James Clelland, Thomas M'Culloch, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnstone, Andrew White, David Thomson, James White, William Clackson or Clarkson, Thomas Pike or Pink, Robert Gray, Alexander Hart, John Barr, William Smith, Thomas M'Farlane, John Anderson, William Crawford, John M'Millan, and Andrew Dawson,—you present the melancholy spectacle of two-and-twenty subjects of this country who have forfeited their lives to its justice; a spectacle, I believe, unexampled in the history of this country,—such, at least, as I never witnessed, and I trust in God never shall witness again. The crime of which you have been convicted is the crime of High Treason,—a crime the highest known to the law, and the highest, I may venture to say, which can be known to a reflecting mind; because, in fact, whatever may be the motive which a man has in view who engages in the crime of High Treason, we all must be aware, that the crime, whether ultimately successful or not in its progress—if progress it has—must produce unutterable misery and confusion. It is impossible that Treason can make any progress towards success, without deluging the country in which it takes place in blood and slaughter, in plunder and devastation. All countries, therefore, and all laws, have considered the crime of High Treason as the deepest which any subject can possibly commit. At the same time I am well aware, that, from the delusion which has been practised against you, and from the principles, perhaps, which some of you have imbibed, you may view this in a different light, and that you may consider yourselves, not as the victims of justice, but as martyrs for liberty.

Some of you, for any thing I know, may even glory in your suffering; but remember this, that sentence of death is now to be passed on you all,—and remember, that whatever may be your opinion as to the moral guilt of the crime of which you have been convicted, that all of you, at least, are miserable sinners. All of you have vices and sins to answer for at the throne of God, and die when you may, or for whatever cause, those sins must be answered for; and,

therefore, whatever may be your opinion of the guilt of this crime of which you have been convicted, remember that you still have the sins which beset human nature to answer for at the throne of God: and I entreat and conjure you all, to look into your own breasts,—to recal the actions of your past lives,—and to pray to God to give you that repentance which leadeth unto life, and for which, alas! the best of us have too much occasion. Remember that repentance alone is not sufficient; remember that you have to appear before a God who is not only possessed of infinite mercy, but of inflexible justice; that both must be satisfied by us miserable sinners before we can hope for mercy at his throne; and as we ourselves, alas! have nothing to offer, have nothing to plead in mitigation of punishment from that inflexible justice, which must be satisfied as well as his mercy, let me entreat you to have recourse to that Redeemer, who stands as a Mediator between our God and us, through whom alone we can all hope for mercy.

It only remains for me now to pronounce against one and all of you the last awful sentence of the law. In regard to you, Andrew Hardie and John Baird, I can hold out little or no hopes of mercy. You were selected for trial as the leaders of that band in which you were associated. You were convicted after a full and fair trial; and it is utterly impossible to suppose, considering the convulsions into which this country was thrown, that the Crown must not feel a necessity of making some terrible examples; and, as you were the leaders, I am afraid that example must be given by you. With regard to the rest of you, I hope and trust that mercy may be extended to the most, if not to all of you; but it is not to this Court that mercy belongs, and we cannot guarantee it. It depends upon the mercy of the Crown alone; a mercy which is never exercised capriciously, and never ought to be exercised capriciously. The ministers of the Crown, standing in the elevated situation which they hold, are bound to take into view the interests of the whole community, and not to extend mercy to individual cases, merely for the sake of mercy, if the interests of the country should in fact demand your punishment. I hope

and trust, however, that the contrary may be the case; but let me warn you all, in the mean time, to avail yourselves of the short time that is granted to you to prepare for the worst. The worst may come upon some of you, and I hope and trust you will be prepared for it; and, at all events, you will not live in future the worse men that you have prepared to die.

The sentence of the law is,—That you, and each of you, be taken to the place from whence you came, and that you be drawn on a hurdle to the place of execution, and there be hung by the neck until you are dead, and afterwards your head severed from your body, and your body divided into four quarters, to be disposed of as his Majesty may direct; and may God, in his infinite goodness, have mercy on your souls.

I have only to intimate now, that a warrant will be signed by the Court for your execution, on Friday, the eighth day of September.

[*The Prisoners were then taken from the Bar.*

Lord President.—Gentlemen of the petty Jury, you are now discharged from farther attendance. The Court regret extremely the trouble and fatigue you had on the former occasion; at present, I trust, you will not complain of any thing of that kind, and I am sure the country will be satisfied with your attention; and I do trust, that the proceedings of this Commission will have that beneficial effect upon the country which was intended.

Great and abominable crimes undoubtedly were intended; of that we have had complete proof by the convictions which have taken place of so many. I hope and trust, that what has passed in the administration of justice here, and what has fallen from the counsel on all sides, will have a most useful and beneficial effect, by satisfying the people, that whatever shades of difference there may be,—whatever little petty grievances this or that order of the community may have,—whatever trifling alterations any persons may think necessary in the constitution,—the great and important principles of this constitution are the best, the wisest,

and the freest, that the sun ever yet saw. Some people may think that there may be some grievances,—others may think, the constitution may yet be amended; but, upon the whole, we all live happily, freely, and comfortably under it as it stands: and although those who think they have grievances should not succeed in having them redressed,—although those who think reformation in some degree necessary do not obtain it,—still they have the satisfaction of knowing, they enjoy a greater degree of liberty under the Constitution as it stands than any other nation, and as much, I believe, as human nature in this world is capable of enjoying; for of one thing be assured, that, unless we continue a virtuous people, we are not fit for liberty, and, therefore, it is that I say, that the degree of liberty which we at present enjoy is, I am afraid, as much as we are capable of enjoying with benefit to ourselves; and any attempt to give us a much greater degree of it, (I speak not of little alterations, or reformations,) would in fact end in the destruction of that which we have.

I have only to state the sense which the Court have, with the Counsel for the Crown, of the activity of the Magistrates of this district. It is highly to their praise; and I hope and trust, that, from the highest to the lowest, they will persevere in their endeavours to preserve the peace of this most important part of the country, and, above all, to enlighten the people as to their true interests, and their just rights.

WARRANT FOR EXECUTION.

The King against Andrew Hardie and Others.

STIRLINGSHIRE, to wit,—At a special session of Oyer and Terminer of our present Sovereign Lord the King, of and for the county of Stirling, holden at the town of Stirling, in the said county, on Friday, the 23d day of June, in the first year of the reign of our Sovereign Lord George

the Fourth, by the grace of God of the united kingdom of Great Britain and Ireland King, Defender of the Faith, before Charles Hope, Esquire, President of the College of Justice of our said Lord the King, in that part of the united kingdom of Great Britain and Ireland called Scotland; the Right Honourable David Boyle, Esquire, Justice-Clerk of our said Lord the King, in the aforesaid part of the said united kingdom; the Right Honourable Sir Samuel Shepherd, Knight, Chief Baron of our said Lord the King of his Court of Exchequer, in the aforesaid part of the said united kingdom; the Right Honourable William Adam, Esquire, Chief Commissioner of the Jury Court in civil causes, in the aforesaid part of the said united kingdom; George Fergusson, Esquire, of Hermand, and Adam Gillies, Esquire, of Gillies, two of the Commissioners of our said Lord the King of Justiciary, in the aforesaid part of the said united kingdom; of whom the said George Fergusson and Adam Gillies, or one of them, amongst others in the said letters patent named, our said Lord the King willed should be one;—and from thence continued, by several adjournments, until Friday, the 4th day of August, then next following, and then held before the said Charles Hope, Sir Samuel Shepherd, and David Monypenny, Esquire, of Pitmilly, Justices and Commissioners of our said Lord the King, assigned by letters patent of our said Lord the King, under the Great Seal of the united kingdom of Great Britain and Ireland, made by virtue of and according to the form of the statute, made in the 7th year of the reign of the Lady Anne, late Queen of Great Britain, &c. entitled, "An Act for improving the Union of the two Kingdoms," to us and others, and to any two or more of us, and them directed, of whom the said David Monypenny, amongst others in the said letters patent named, our said Lord the King willed should be one, to inquire, by the oath of good and lawful men of the county of Stirling, of all High Treasons, and misprisions of High Treason, within the county aforesaid, as well within liberties as without, by whomsoever and in what manner soever, and by whom, when, how, and after

what manner done, committed, or perpetrated, and of all other articles and circumstances concerning the premises, and every of them, or any of them, in any manner whatsoever, and the same High Treasons, and misprisions of High Treason, according to the form of the foresaid statute, to hear and determine, Andrew Hardie is attainted, on verdict of High Treason, in levying war against our Lord the King within his realm; John Baird is attainted, on verdict of a like High Treason; James Clelland, Thomas M'Culloch, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, *alias* William Clarkson, Thomas Pike, *alias* Thomas Pink, Robert Gray, Alexander Hart, John Barr, William Smith, Thomas M'Farlane, are severally attainted, on confession of High Treason, in compassing and imagining the death of our Lord the King; John Anderson is attainted, on confession of High Treason, in compassing and imagining the death of our Lord the King; William Crawford is attainted, on confession of High Treason, in compassing and imagining the death of our Lord the King; John M'Millan and Andrew Dawson are attainted, on confession of High Treason, in compassing and imagining the death of our Lord the King.—Let them, the said Andrew Hardie, John Baird, James Clelland, Thomas M'Culloch, Benjamin Moir, Allan Murchie, Alexander Latimer, Alexander Johnston, Andrew White, David Thomson, James Wright, William Clackson, *alias* William Clarkson, Thomas Pike, *alias* Thomas Pink, Robert Gray, Alexander Hart, John Barr, William Smith, Thomas M'Farlane, John Anderson, William Crawford, John M'Millan, and Andrew Dawson, return to the gaol from whence they came, and from thence be severally drawn on a hurdle to the place of execution, and be there hanged by the neck until they be dead; and that afterwards their heads be severed from their bodies, and their bodies (divided into four quarters) be disposed of as our Lord the King shall think fit. And let this sentence be carried into execution upon Friday, the eighth day of Sep-

tember next, between the hours of twelve o'clock at noon, and four o'clock in the afternoon of the same day.

Given under our hands and seals this fourth day of August, in the first year of the reign of our said Lord the King, and in the year of Our Lord One thousand eight hundred and twenty.

C. Hope.
S. Shepherd.
D. Monypenny.

To the Sheriff-Depute of the County of Stirling, His Substitute, The Provost and Magistrates of the Town of Stirling, and all others whom it may concern.

The Court then adjourned to the 25th November, at ten o'clock.

Andrew Hardie and John Baird were executed, pursuant to their sentence, on the 8th day of September, 1820.

END OF VOLUME FIRST.

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